

1-29-2010

Idaho Dev't v. Teton View Golf Estates Clerk's Record v. 2 Dckt. 37771

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/
idaho_supreme_court_record_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

Recommended Citation

"Idaho Dev't v. Teton View Golf Estates Clerk's Record v. 2 Dckt. 37771" (2010). *Idaho Supreme Court Records & Briefs*. 2730.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/2730

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

LAW CLERK

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

Volume 2 of 7

IDAHO DEVELOPMENT, LLC

Plaintiff _____ and

Appellant
vs.

SEE AUGMENTATION RECORD

ROTHCHILD PROPERTIES, LLC,

Defendants _____ and

Respondents _____

Appealed from the District Court of the _____ Seventh _____ Judicial

District of the State of Idaho, in and for _____ Bonneville _____ County

Hon. _____ Jon J. Shindurling _____, District Judge

FILED - COPY

NOV 29 2008

Attorney for Appellant

Supreme Court _____ Court of Appeals _____
Entered on 11/29/08 by _____

Attorney for Respondent

Filed this _____ day of _____, 20 _____

Clerk

By _____

Deputy

37771 COPY

Jeffrey D. Brunson, ISB No. 6996
Beard St. Clair Gaffney PA
2105 Coronado Street
Idaho Falls, ID 83404-7495
Phone: (208) 523-5171
Fax: (208) 529-9732

Attorneys for Defendant, Schiess & Associates, P.C.

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO**

IDAHO DEVELOPMENT, LLC, a Utah limited
liability company,

Plaintiff,

vs.

TETON VIEW GOLF ESTATES, LLC, a Utah
limited liability company; ROTHCHILD
PROPERTIES, LLC, a Utah limited liability
company; WESTERN EQUITY, LLC, a Utah
limited liability company; AMERITITLE
COMPANY; ZBS, LLC, an Idaho limited liability
company; DEPATCO, INC., an Idaho Corporation;
SCHIESS & ASSOCIATES, P.C., an Idaho
Professional Service Corporation; HD SUPPLY
WATERWORKS, LTD.; DOES 1-3, and ALL
PERSONS IN POSSESSION OF REAL PROPERTY
DESCRIBED HEREIN.

Defendants.

SCHIESS & ASSOCIATES, P.C., an Idaho
Professional Service Corporation,

Counterclaimant,

vs.

IDAHO DEVELOPMENT, LLC, a Utah limited
liability company.

Counterdefendant.

Case No.: CV-08-4395

SCHIESS & ASSOCIATES,
P.C.'S ANSWER,
COUNTERCLAIM,
CROSSCLAIM, THIRD PARTY
COMPLAINT AND JURY
DEMAND

Filing Fees:

Category J.5. \$14.00

Category J.6. \$14.00

159

SCHIESS & ASSOCIATES, P.C., an Idaho
Professional Service Corporation,

Crossclaimant,

vs.

TETON VIEW GOLF ESTATES, LLC, a Utah
limited liability company; ROTHCHILD
PROPERTIES, LLC, a Utah limited liability
company; WESTERN EQUITY, LLC, a Utah
limited liability company; AMERITITLE
COMPANY; ZBS, LLC, an Idaho limited liability
company; DEPATCO, INC., an Idaho Corporation;
HD SUPPLY WATERWORKS, LTD.; DOES 1-3,
and ALL PERSONS IN POSSESSION OF REAL
PROPERTY DESCRIBED HEREIN.

Crossdefendants.

SCHIESS & ASSOCIATES, P.C., an Idaho
Professional Service Corporation,

Third Party Plaintiff,

vs.

BRAD ZUNDEL, an individual; JIM ZUNDEL, an
individual.

Third Party Defendants.

Defendant/Counterclaimant/Crossclaimant, Schiess & Associates, P.C. (Schiess),
by and through counsel of record, denies all allegations of the Amended Complaint to
Foreclose Deed of Trust and Other Actions not expressly admitted herein and more
specifically respond as follows:

1. Schiess admits paragraph 1 of the Amended Complaint. However, Schiess specifically alleges that Plaintiff, Idaho Development, LLC is not registered to do business in Idaho and as a result is incapable of maintaining and pursuing this action.

2. Schiess does not have sufficient information to admit or deny paragraph 2, and therefore denies paragraph 2.

3. Schiess does not have sufficient information to admit or deny paragraph 3, and therefore denies paragraph 3.

4. Schiess does not have sufficient information to admit or deny paragraph 4, and therefore denies paragraph 4.

5. Schiess does not have sufficient information to admit or deny paragraph 5, and therefore denies paragraph 5.

6. Schiess does not have sufficient information to admit or deny paragraph 6, and therefore denies paragraph 6.

7. Schiess does not have sufficient information to admit or deny paragraph 7, and therefore denies paragraph 7.

8. Schiess admits that it is an Idaho corporation, that it provided engineering services for the property, and that it claims an interest in the property. Schiess denies the remainder of the allegations contained in paragraph 8.

9. Schiess does not have sufficient information to admit or deny paragraph 9, and therefore denies paragraph 9.

10. Schiess does not have sufficient information to admit or deny paragraph 10, and therefore denies paragraph 10.

11. Schiess does not have sufficient information to admit or deny paragraph 11, and therefore denies paragraph 11.

12. Schiess denies that its lien on the property is junior, subordinate, or subsequent to any right, title, lien, or interest in the property held by plaintiff. Schiess does not have sufficient information to admit or deny the remainder of paragraph 12, and therefore denies the remainder of paragraph 12.

13. Schiess does not have sufficient information to admit or deny paragraph 13, and therefore denies paragraph 13.

14. Schiess incorporates its responses to paragraphs 1 through 13 to the Amended Complaint.

15. Schiess does not have sufficient information to admit or deny paragraph 15, and therefore denies paragraph 15.

16. Schiess does not have sufficient information to admit or deny paragraph 16, and therefore denies paragraph 16.

17. Schiess does not have sufficient information to admit or deny paragraph 17, and therefore denies paragraph 17.

18. Schiess does not have sufficient information to admit or deny paragraph 18, and therefore denies paragraph 18.

19. Schiess does not have sufficient information to admit or deny paragraph 19, and therefore denies paragraph 19.

20. Schiess does not have sufficient information to admit or deny paragraph 20, and therefore denies paragraph 20.

21. Schiess does not have sufficient information to admit or deny paragraph 21, and therefore denies paragraph 21.

22. Schiess does not have sufficient information to admit or deny paragraph 22, and therefore denies paragraph 22.

23. Schiess does not have sufficient information to admit or deny paragraph 23, and therefore denies paragraph 23.

24. Schiess does not have sufficient information to admit or deny paragraph 24, and therefore denies paragraph 24.

25. Schiess does not have sufficient information to admit or deny paragraph 25, and therefore denies paragraph 25.

26. Schiess does not have sufficient information to admit or deny paragraph 26, and therefore denies paragraph 26.

27. Schiess does not have sufficient information to admit or deny paragraph 27, and therefore denies paragraph 27.

28. Schiess does not have sufficient information to admit or deny paragraph 28, and therefore denies paragraph 28.

29. Schiess does not have sufficient information to admit or deny paragraph 29, and therefore denies paragraph 29.

30. Schiess does not have sufficient information to admit or deny paragraph 30, and therefore denies paragraph 30.

31. Schiess does not have sufficient information to admit or deny paragraph 31, and therefore denies paragraph 31.

32. Schiess does not have sufficient information to admit or deny paragraph 32, and therefore denies paragraph 32.

33. Schiess does not have sufficient information to admit or deny paragraph 33, and therefore denies paragraph 33.

34. Schiess incorporates its responses to paragraphs 1 through 33 to the Amended Complaint.

35. Schiess does not have sufficient information to admit or deny paragraph 35, and therefore denies paragraph 35.

36. Schiess denies it borrowed money from Plaintiff. Schiess does not have sufficient information to admit or deny the remainder of paragraph 36, and therefore denies the remainder of paragraph 36.

37. Schiess denies it borrowed money from Plaintiff. Schiess does not have sufficient information to admit or deny the remainder of paragraph 37, and therefore denies the remainder of paragraph 37.

38. Schiess does not have sufficient information to admit or deny paragraph 38, and therefore denies paragraph 38.

39. Schiess does not have sufficient information to admit or deny paragraph 39, and therefore denies paragraph 39.

40. Schiess does not have sufficient information to admit or deny paragraph 40, and therefore denies paragraph 40.

AFFIRMATIVE DEFENSES

Schiess asserts the following affirmative defenses:

1. The Amended Complaint fails to state a claim upon which relief can be granted.

2. Schiess has priority pursuant to Idaho Code §§ 45-506 and 45-512 and *Ultrawall, Inc. v. Trepagnier*, 135 Idaho 832, 25 P.3d 855 (2001); *Pacific States Sav., Loan. and Bldg. Co. v. Dubois*, 11 Idaho 319, 83 P. 513 (1905).

3. Schiess has priority because it commenced performing services on the property before Plaintiff recorded its deed of trust.

4. Plaintiff's claims are barred by the doctrine of unclean hands.

5. Plaintiff's claims are barred by the doctrine of failure of consideration.

There was no consideration given for the February 29, 2008 promissory note, because on February 28, 2008 plaintiff contracted to purchase an ownership interest in Teton View Golf Estates, LLC for \$1,100,000. The \$1,100,000 was a capital contribution pursuant to Utah Code § 48-2c-901 and not a loan to Teton View Golf Estates, LLC.

6. Plaintiff's claims are barred because there is no debt for the Deed of Trust to secure.

7. Plaintiff's attempts to secure its distributions from Teton View Golf Estates, LLC are barred by Utah Code § 48-2c-1005. Plaintiff is only entitled to recoup its investment in Teton View after all creditors, including Schiess, have been repaid in full.

8. To the extent Plaintiff is entitled to enforce the Deed of Trust, the Court should equitably subordinate such security interest to Schiess's lien, as Plaintiff is an owner and member of Teton View Golf Estates, LLC, and it would be inequitable and unfair to allow a member of an LLC to secure its investment in the LLC at the expense of the LLC's creditors.

9. Utah Code § 48-2c-1308 establishes that the priority of a creditor, such as Schiess, is superior to the status of a member of a Utah LLC in the member's capacity as a creditor.

10. The promissory note, attached as Exhibit A to the Amended Complaint provides that Idaho Development shall subordinate its claim to any third party construction financing. As Schiess provided engineering services on credit to Teton View Golf Estates, LLC, it has provided third party construction financing to the property

that is the subject of this dispute, and therefore, Plaintiff's Deed of Trust is subordinated to Schiess's lien claims.

11. Plaintiff's claims are barred by Plaintiff's own fraudulent conduct.

12. Plaintiff's claims are barred because Plaintiff is not registered to do business in Idaho.

PRAYER FOR RELIEF

WHEREFORE, Schiess demands judgment:

1. Dismissing the Amended Complaint in its entirety;
2. Determining that Schiess's lien has priority to all other liens and claims on the property;
3. Awarding Schiess' reasonable attorneys' fees, costs and disbursements of defending this action pursuant to, Idaho Code §§ 12-120, 12-121, 45-513, Rule 54 of the Idaho Rules of Civil Procedure, and any other rule or provision; and
4. Granting such other and further relief as the Court deems just and proper.

COUNTERCLAIM/CROSS CLAIM/THIRD PARTY COMPLAINT

1. Counterclaimant/Crossclaimant/Third Party Plaintiff, Schiess & Associates, P.C. (Schiess), is an Idaho professional service corporation with its principle place of business in Bonneville County, Idaho.

2. Counterdefendant, Idaho Development, LLC (Idaho Development), is a Utah limited liability company.

3. Crossdefendant, Teton View Golf Estates, LLC (Teton View), is a Utah limited liability company.

4. Crossdefendant, Rothchild Properties, LLC (Rothchild), is a Utah limited liability company.

5. Crossdefendant, Western Equity, LLC, (Western Equity) is a Utah limited liability company.

6. Crossdefendant, Amerititle Company (Amerititle), is the Trustee for a Deed of Trust granted by Teton View for the benefit of ZBS, LLC, dated March 4, 2008, and recorded as Instrument No. 1292699 on March 10, 2008, records of Bonneville County, Idaho.

7. Crossdefendant, ZBS, LLC (ZBS), is an Idaho limited liability company with its principal place of business in St. Anthony, Fremont County, Idaho.

8. Crossdefendant, Depatco, Inc. (Depatco), is an Idaho corporation with its principal place of business in St. Anthony, Fremont County, Idaho.

9. Crossdefendant, HD Supply Waterworks, LTD doing business as HD Supply Waterworks (HD Supply), filed a lien against the property recorded October 30, 2008, under Instrument No. 1315631, records of Bonneville County, Idaho.

10. Third Party Defendant, Brad Zundel is an individual residing in Bonneville County, Idaho.

11. Third Party Defendant, Jim Zundel is an individual residing in Fremont County, Idaho.

JURISDICTION AND VENUE

12. This Court has jurisdiction pursuant to Idaho Code § 5-514.

13. Bonneville County is a proper venue for this action pursuant to Idaho Code § 5-404.

FACTUAL ALLEGATIONS

14. On June 20, 2007, Schiess entered a contract with Brad and Jim Zundel (collectively Zundels), where Schiess agreed to provide surveying, testing, and engineering services to Zundels in exchange for payment.

15. On May 16, 2008, Schiess entered a contract with Teton View, where Schiess agreed to provide surveying, testing, and engineering services to Teton View Golf Estates, LLC, in exchange for payment.

16. The surveying, testing, and engineering services pertained to property (Property) containing a legal description as follows:

BEGINNING AT A POINT THAT IS SOUTH 00°27'09" EAST 25.00 FEET FROM THE NORTHEAST SECTION CORNER OF SECTION 31, TOWNSHIP 3 NORTH RANGE 38, EAST OF THE BOISE MERIDIAN, BONNEVILLE COUNTY, IDAHO, RUNNING THENCE SOUTH 00°27'09" EAST 913.64 ALONG THE EAST SECTION LINE; THENCE SOUTH 89°32'51" WEST 215.00 FEET; THENCE SOUTH 00°27'09" EAST 99.94 FEET; THENCE NORTH 89°32'51" EAST 182.00 FEET; THENCE SOUTH 00°27'09" EAST 27.47 FEET; THENCE SOUTH 89°32'51" WEST 341.11 FEET; THENCE NORTH 01°00'19" WEST 127.42 FEET; THENCE SOUTH 89°32'51" WEST 1413.98 FEET; THENCE NORTH 36°38'38" WEST 116.19 FEET; THENCE NORTH 15°14'53" WEST 260.01 FEET; THENCE NORTH 01°00'18" EAST 255.52 FEET; THENCE NORTH 02°41'50" EAST 280.33 FEET; THENCE NORTH 02°25'59" EAST 15.16 FEET; THENCE NORTH 89°00'18" EAST 1901.74 FEET TO THE POINT OF BEGINNING

The Property is now known as Teton View Estates.

17. Schiess provided surveying, testing, and engineering services pursuant to the contracts commencing on or about June 20, 2007 through on or about October 27, 2008.

18. The sum of not less than \$92,880.71 plus attorney fees and interest from October 29, 2008, is the reasonable value of said services that have been provided but not paid for.

19. Schiess obtained a litigation guarantee from First American Title Company. The litigation guarantee is attached as Exhibit A.

COUNT ONE: LIEN FORECLOSURE (All Parties)

20. Schiess realleges all previous paragraphs.

21. Schiess recorded a claim of lien on October 29, 2008, as Instrument No. 1315496 in Bonneville County, Idaho against the Property (Lien). A copy of the Lien is attached as Exhibit B.

22. Schiess's lien is in the amount of \$92,880.71, plus attorney fees, costs, and interest.

23. The services were provided for the benefit of the Property.

24. As a result of Zundels and Teton Views' failure to pay, Schiess is entitled to foreclose its Lien on the Property.

25. Schiess is entitled to judgment foreclosing its Lien and adjudicating its Lien to be superior to and prior in right to the interest claimed by all parties, or declaring the rank of the respective liens pursuant to Idaho Code §§ 45-506 and 45-512.

26. Schiess has been required to retain the services of Beard St. Clair Gaffney PA in order to protect its rights. Schiess is entitled to recover costs and attorney fees pursuant to agreement, Idaho Code §§ 45-513, 12-120, 12-121, Rule 54 of the Civil Procedure, or any other statute or provision.

COUNT TWO: BREACH OF CONTRACT (Zundels, Teton View)

27. Schiess realleges all previous paragraphs.

28. Schiess and Zundels entered a contract.

29. Schiess and Teton View entered a contract.

30. The contracts are supported by consideration.

31. Schiess has substantially performed its obligations under the contracts and is not in material breach.

32. Zundels and Teton View have failed to pay Schiess pursuant to the contract.

33. Zundels and Teton Views' failure to pay is a material breach of contract.

34. Zundels and Teton Views' material breach is the direct and proximate result of damages to Schiess in an amount to be proven at trial but in no event less than \$92,880.71 plus attorney fees, costs, and interest.

35. Schiess has been required to retain the services of Beard St. Clair Gaffney PA in order to protect its rights. Schiess is entitled to recover costs and attorney fees pursuant to agreement, Idaho Code §§ 45-513, 12-120, 12-121, Rule 54 of the Civil Procedure, or any other statute or provision.

COUNT THREE: QUANTUM MERUIT (Zundels, Teton View)

36. Schiess realleges all previous paragraphs.

37. Schiess furnished surveying, testing, and engineering services to the Property upon Zundels, Teton View, or their agents' requests and promises to pay the reasonable value thereof.

38. Schiess provided services and material commencing on or about June 20, 2007 through on or about October 27, 2008. Schiess fully performed its required obligations.

39. Schiess has not been fully paid for its services. The value of the unpaid services is not less than \$92,880.71 plus attorney fees, costs, and interest.

40. Zundels and Teton View voluntarily and knowingly accepted the benefit of the services.

41. Schiess is entitled to recover from Zundels and Teton View in an amount to be proven at trial but in no event less than \$92,880.71 plus attorney fees, costs, and interest.

42. Schiess has been required to retain the services of Beard St. Clair Gaffney PA in order to protect its rights. Schiess is entitled to recover costs and attorney fees pursuant to agreement, Idaho Code §§ 45-513, 12-120, 12-121, Rule 54 of the Civil Procedure, or any other statute or provision.

COUNT FOUR: UNJUST ENRICHMENT (Zundels, Teton View)

43. Schiess realleges all previous paragraphs.

44. The services provided by Schiess are incorporated into the Property and Zundels and Teton View are unjustly enriched at Schiess's expense to Schiess's detriment.

45. Zundels and Teton View are unjustly enriched in an amount to be proven at trial but in no event less than \$92,880.71 plus attorney fees, costs, and interest.

46. Schiess is entitled to recover from Zundels and Teton View.

47. Schiess has been required to retain the services of Beard St. Clair Gaffney PA in order to protect its rights. Schiess is entitled to recover costs and attorney fees pursuant to agreement, Idaho Code §§ 45-513, 12-120, 12-121, Rule 54 of the Civil Procedure, or any other statute or provision.

COUNT FIVE: IMPLIED IN FACT CONTRACT (Zundels, Teton View)

48. Schiess realleges all previous paragraphs.

49. Schiess furnished engineering services to the Property upon Zundels, Teton View, or their agents' requests and promises to pay the reasonable value thereof.

50. The services provided by Schiess are incorporated into the Property.

51. Zundels and Teton View accepted the services and materials provided by Schiess.

52. The conduct of the parties implies an agreement from which an obligation in contract exists.

53. Schiess has substantially performed its obligations under this implied in fact agreement and is not in material breach.

54. Zundels and Teton View have failed to pay for the services provided by Schiess.

55. Zundels and Teton Views' failure to pay for the services provided by Schiess is a material breach of the implied in fact contract.

56. Zundels and Teton Views' material breach of the implied in fact agreement is the direct and proximate cause of damages to Schiess.

57. Schiess has suffered damages in an amount to be determined at trial but in no event less than \$92,880.71 plus attorney fees, costs, and interest.

58. Schiess has been required to retain the services of Beard St. Clair Gaffney PA in order to protect its rights. Schiess is entitled to recover costs and attorney fees pursuant to agreement, Idaho Code §§ 45-513, 12-120, 12-121, Rule 54 of the Civil Procedure, or any other statute or provision.

COUNT SIX: PROMISSORY ESTOPPEL (Zundels, Teton View)

59. Schiess realleges all previous paragraphs.

60. Schiess, in justifiable and foreseeable reliance upon Zundels and Teton Views' promises that they would pay for the services provided by Schiess, acted reasonably by providing those services to Zundels and Teton View.

61. The detriment and/or harm suffered by Schiess in reliance upon the promises made by Zundels and Teton View are substantial in an economic sense.

62. Schiess has suffered damages in an amount to be determined at trial but in no event less than \$92,880.71 plus attorney fees, costs, and interest.

63. Schiess has been required to retain the services of Beard St. Clair Gaffney PA in order to protect its rights. Schiess is entitled to recover costs and attorney fees pursuant to agreement, Idaho Code §§ 45-513, 12-120, 12-121, Rule 54 of the Civil Procedure, or any other statute or provision.

COUNT SEVEN: EQUITABLE SUBORDINATION (Teton View)

64. Schiess realleges all previous paragraphs.

65. On or about February 28, 2008, Idaho Development, LLC entered into an agreement with Rothchild Properties, LLC, whereby Idaho Development and Rothchild Properties became joint owners and members of Teton View. Pursuant to the agreement, Idaho Development invested \$1,100,000 in Teton View for which Idaho Development obtained an ownership interest in Teton View and the right to certain distributions pursuant to the February 28, 2008 agreement and the operating agreement for Teton View.

66. On or about February 29, 2008, Teton View signed a promissory note and provided Idaho Development with a Commercial Loan Deed of Trust in the amount of \$1,100,000 recorded as Bonneville County Instrument No. 1291905 a copy of which is attached as Exhibit B to Plaintiff's Amended Complaint. The purpose of this promissory note and Deed of Trust was an attempt to convert Plaintiff's purchase of an ownership interest in Teton View into a debt secured by the Deed of Trust in order to defraud any future creditors of Teton View including Schiess.

67. On or about March 20, 2008, Idaho Development recorded an Amendment of Deed of Trust in the amount of \$850,000 as Bonneville County Instrument No. 1292697, a copy of which is attached as Exhibit C to Plaintiff's Amended Complaint.

68. The deeds of trust recorded by Idaho Development are invalid because they do not secure any debt between Idaho Development and Teton View.

69. If the deeds of trust recorded by Idaho Development are valid, such interests should be equitably subordinated to Schiess's lien because Idaho Development is a member of Teton View and pursuant to Utah Statutes regarding Utah LLCs, creditors of the LLC have priority to members of the LLC who are also creditors.

70. Schiess has been required to retain the services of Beard St. Clair Gaffney PA in order to protect its rights. Schiess is entitled to recover costs and attorney fees pursuant to agreement, Idaho Code §§ 45-513, 12-120, 12-121, Rule 54 of the Civil Procedure, or any other statute or provision.

PRAYER FOR RELIEF

Schiess prays this Court for judgment as follows:

1. Entering judgment in favor of Schiess against Zundels and Teton View.

A. In an amount to be determined at trial, but not less than \$92,880.71 plus, attorney fees, costs, and interest thereon at 18% per annum (1.5% monthly) pursuant to agreement;

B. Awarding costs and attorney fees pursuant to agreement, Idaho Code §§ 45-513, 12-120, 12-121, Rule 54 of the Civil Procedure, or any other statute or provision;

C. Granting such other relief the Court deems just and proper.

2. Entry of judgment in favor of Schiess against all parties as follows:

A. Foreclosing the Lien held by Schiess in the amount of \$92,880.71 plus, attorney fees, costs, and interest thereon at 18% per annum;

B. Declaring all parties and all persons claiming or to claim an interest in the Property, be barred and foreclosed of all right, title interest, claim or equity or redemption in and to the Property;

C. Alternatively, establishing the priority of all claimants;

D. Ordering the sale of all the Property according to law and directing the proceeds of the sale to be applied to the full amount due Schiess;

E. Ordering Schiess be allowed to bid at the sale of the Property by credit bid;

F. That the second deed of trust signed March 7, 2008 and recorded as instrument number 1292697 in Bonneville County, Idaho be set aside and invalidated;

G. That the first deed of trust signed February 29, 2008 and recorded as instrument number 1291905 in Bonneville County, Idaho be set aside and invalidated;

H. That any deed of trust or other security interest of Idaho Development be subordinated;

I. That it be declared by this Court that all claimants have only such claim or interest in the Property as is subsequent, subordinate, and inferior to Schiess's lien pursuant to Idaho Code §§ 45-506, 45-512;

J. That Teton View and Zundels pay any deficiency to Schiess that may remain after applying all said proceeds to the satisfaction of Schiess's lien;

K. That Schiess be awarded appropriate post-judgment interest and post judgment attorney fees and that such amounts be foreclosed, together with the principle amount of the lien;

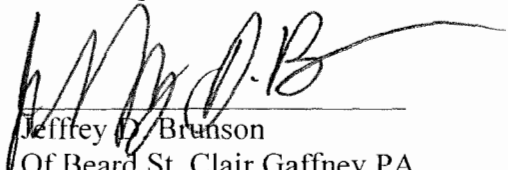
L. Awarding costs and attorney fees pursuant to agreement, Idaho Code §§ 45-513, 12-120, 12-121, Rule 54 of the Civil Procedure, or any other statute or provision;

M. Granting such other relief the Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38 of the Idaho Rules of Civil Procedure, Schiess requests a trial by jury on all issues deemed triable by jury.

Dated: April 28, 2009.



Jeffrey D. Brunson
Of Beard St. Clair Gaffney PA
Attorneys for Schiess & Associates, P.C.

CERTIFICATE OF SERVICE

I certify that I am a licensed attorney in the State of Idaho and that on April 28, 2009, I served a true and correct copy of the SCHIESS & ASSOCIATES, P.C.'S ANSWER, COUNTERCLAIM, CROSSCLAIM, THIRD PARTY COMPLAINT AND JURY DEMAND upon the following by the method of delivery designated:

Alan Harrison
Alan R. Harrison Law
497 N Capital Avenue, Suite 210
Idaho Falls, ID 83402
Fax: 552-1176

☒ US Mail ☐ Hand delivered ☐ Facsimile

Karl Decker
Holden Kidwell
PO Box 50130
Idaho Falls, ID 83405-0130
Fax: 523-9518

☒ US Mail ☐ Hand delivered ☐ Facsimile

Mark Fuller
Fuller & Carr
PO Box 50935
Idaho Falls, ID 83405-0935
Fax: 524-7167

☒ US Mail ☐ Hand delivered ☐ Facsimile

Douglas Hookland
Scott Hookland
PO Box 23414
Tigard, OR 97281-3414
Fax: 503-620-4540

☒ US Mail ☐ Hand delivered ☐ Facsimile

Lynn C. Spafford
Teton View Golf Estates, LLC
PO Box 711946
Salt Lake City, UT 84171

☒ US Mail ☐ Hand delivered ☐ Facsimile

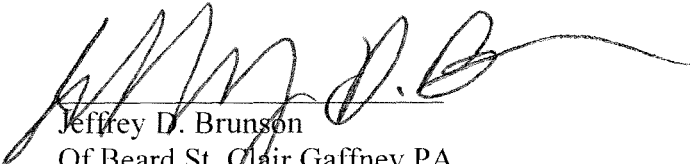
Tony M. Versteeg
Western Equity, LLC
Rothchild Properties
11105 S. Londonberry Drive
Draper, UT 84092

☒ US Mail ☐ Hand delivered ☐ Facsimile

177

Bonneville County Courthouse
605 N Capital Avenue
Idaho Falls, ID 83402
Fax: 529-1300

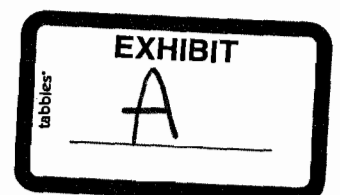
☐ US Mail ☒ Hand delivered ☐ Facsimile


Jeffrey D. Brunson
Of Beard St. Clair Gaffney PA
Attorneys for Schiess & Associates, P.C.

GUARANTEE

Issued by

First American Title Company
900 Pier View Drive Ste. 110, Idaho Falls, ID 83402
Title Officer: Lois Olson
Phone: (208)522-9195
FAX: (208)529-8965



LITIGATION GUARANTEE

SUBJECT TO THE LIMITATIONS CONTAINED HEREIN, THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND OTHER PROVISIONS OF THE CONDITIONS AND STIPULATIONS HERETO ANNEXED AND MADE A PART OF THIS GUARANTEE.

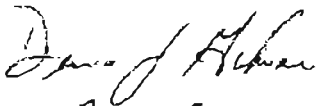

First American Title Insurance Company
a California corporation, herein called the Company
GUARANTEES

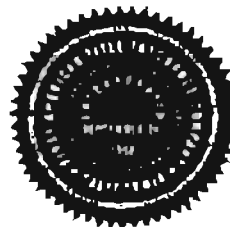
the Assured named in Schedule A against loss not exceeding the liability amount stated in Schedule A which the Assured shall sustain by reason of any incorrectness in the assurance which the Company hereby gives that, according to the public records, as of Date of guarantee shown in Schedule A:

1. The title to the herein described estate or interest is vested in the vestee named in Schedule A.
2. Except for the matters shown in Schedule B, there are no defects, liens, encumbrances or other matters affecting title to the estate of interest in the Land shown in Schedule A, which matters are not necessarily shown in the order of their priority.
3. a) The current interest holders claiming some right, title or interest by reason of the matters shown on Part II of Schedule B are as shown therein. The vestee named in Schedule A and parties claiming to have some right, title or interest by reason of the matters shown in Part II of Schedule B may be necessary to name defendant in an action, the nature of which is referred to in Schedule A.
b) The current interest holders claiming some right, title or interest by reason of the matters shown in Part I of Schedule B may also be necessary to name defendant in an action, the nature of which is referred to in Schedule A. However, no assurance is given hereby as to those current interest holders.
4. The return addresses for mailing after recording, if any, as shown on each and every document referred to in Part II of Schedule B by specific recording information, and as shown on the document(s) vesting title as shown in Schedule A are as shown in Schedule C.

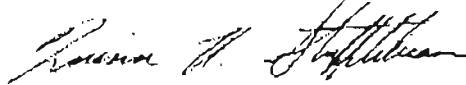
This Litigation Guarantee is furnished solely for the purpose of facilitating the filing of the action referred to in Schedule A. It shall not be used or relied upon for any other purpose.

First American Title Insurance Company

By:  PRESIDENT
ATTEST:  SECRETARY



First American Title Company

By: 

AUTHORIZED SIGNATORY

**SCHEDULE A
LITIGATION GUARANTEE**

LIABILITY: **\$ 92,000.00**

GUARANTEE NO.: **294719-IF**

FEE: **\$ 577.00**

ORDER NO.: **294719-IF**

1. Name of Assured:

Schiess & Associates, an Idaho Corporation and Beard, St. Clair, Gaffney

2. Date of Guarantee: March 17, 2009 at 7:30 A.M.

3. This Litigation Guarantee is furnished solely for the purpose of facilitating the filing of an action to to foreclose on Claim of Lien #1315496

4. The estate or interest in the land which is covered by this guarantee is:

Fee Simple

5. Title to the estate or interest in the Land is vested in:

Teton View Golf Estates, LLC, an Utah Limited Liability Company

6. The Land referred to in this Guarantee is described as follows:

BEGINNING AT A POINT THAT IS SOUTH 00°27'09" EAST 25.00 FEET FROM THE NORTHEAST SECTION CORNER OF SECTION 31, TOWNSHIP 3 NORTH, RANGE 38, EAST OF THE BOISE MERIDIAN, BONNEVILLE COUNTY, IDAHO, RUNNING THENCE SOUTH 00°27'09" EAST 913.64 ALONG THE EAST SECTION LINE; THENCE SOUTH 89°32'51" WEST 215.00 FEET; THENCE SOUTH 00°27'09" EAST 99.94 FEET; THENCE NORTH 89°32'51" EAST 182.00 FEET; THENCE SOUTH 00°27'09" EAST 27.47 FEET; THENCE SOUTH 89°32'51" WEST 341.11 FEET; THENCE NORTH 01°00'19" WEST 127.42 FEET; THENCE SOUTH 89°32'51" WEST 1413.98 FEET; THENCE NORTH 36°38'38" WEST 116.19 FEET; THENCE NORTH 15°14'53" WEST 260.01 FEET; THENCE NORTH 01°00'18" EAST 255.52 FEET; THENCE NORTH 02°41'50" EAST 280.33 FEET; THENCE NORTH 02°25'59" EAST 15.16 FEET; THENCE NORTH 89°00'18" EAST 1901.74 FEET TO THE POINT OF BEGINNING.

Litigation Guarantee
Form No. 110-1282 (Rev. 3/31/04)
1100041P129500

Guarantee No.: **294719-IF**
Page No.: 3

SCHEDULE B

Defects, liens, encumbrances or other matters affecting title:

Part I:

1. 2009 taxes are an accruing lien, not yet due and payable until the fourth Monday in November of the current year. The first one-half is not delinquent until after December 20 of the current year, the second one-half is not delinquent until after June 20 of the following year. Taxes which may be assessed and entered on the property roll for 2009 with respect to new improvements and first occupancy, which may be included on the regular property, which are an accruing lien, not yet due and payable.

General taxes as set forth below. Any amounts not paid when due will accrue penalties and interest in addition to the amount stated herein:

Year	Original Amount	Amount Paid	Parcel Number
2008	\$36.66	\$0.00	RP03N38E310047
2008	\$2,420.18	\$0.00	RP03N38E310191

Homeowners Exemption is not in effect for 2008.
Circuit breaker is not in effect for 2008.

2. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by the recorded plat of said subdivision, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).
3. Levies and assessments of Progressive Irrigation District.
4. Easement granted to Utah Power & Light Company, recorded July 22, 1980, as Instrument No. 589848.
5. Annexation Agreement upon the terms, conditions and provisions contained therein:
Parties: City of Idaho Falls and Teton View Golf Estates, LLC
Recorded: April 28, 2008, Instrument No. 1297929
6. Subject to Idaho Canal along the Westerly side of said property
7. Deed of Trust dated February 29, 2008, to secure an original indebtedness of \$1,100,000.00, and any other amounts and/or obligations secured thereby
Recorded: February 29, 2008, as Instrument No. 1291905
Grantor: Teton View Golf Estates, LLC
Trustee: Alliance Title & Escrow Corp.
Beneficiary: Idaho Development, LLC

Amendment of Deed of Trust recorded March 10, 2008, as Instrument No. 1292697

8. Deed of Trust dated March 4, 2008, to secure an original indebtedness of \$640,000.00, and any other amounts and/or obligations secured thereby
Recorded: March 10, 2008, as Instrument No. 1292699
Grantor: Teton View Golf Estates, LLC, an Utah limited liability company
Trustee: AmeriTitle
Beneficiary: ZBS, LLC, an Idaho limited liability company
9. Action in the Idaho District Court for Idaho, Idaho Development, LLC, a Utah limited liability company Plaintiff vs. Teton View Golf Estates, LLC, a Utah limited liability company; Rothchild Properties, LLC, a Utah limited liability company; Western Equity, LLC, a Utah limited liability company; Lynn Spafford, individually, Tony Versteeg, individually; Amerititle Company; ZBS, LLC, an Idaho limited liability company; Depatco, Inc., an Idaho Corporation; Schiess & Associates, P.C., an Idaho Professional Services Corporation; Does 1-3, and All Persons in Possession of Real Property Described herein Defendant, to to foreclose on a deed of trust held by Plaintiff, Case No. CV-08-4395. Notice of Pendency of Action recorded July 22, 2008, as Instrument No. 1306619 and re-recorded July 25, 2008 as Instrument No. 1306929.
10. Deed of Trust dated August 15, 2008, to secure an original indebtedness of \$250,000.00, and any other amounts and/or obligations secured thereby
Recorded: August 25, 2008, as Instrument No. 1309846
Grantor: Teton View Golf Estates, LLC, a Utah limited liability company
Trustee: First American Title company
Beneficiary: Sandra A. MacArthur Trustee of the Sandra A. MacArthur Family Trust
- Subordination of Mechanic's and Materialman's Lien Rights, recorded August 27, 2008 as Instrument No. 1310120, records of Bonneville County, Idaho.
- Appointment of Trustee, appointing Just Law, Inc., recorded February 11, 2009 as Instrument No. 1323460, records of Bonneville County, Idaho.
- Notice of Default, recorded February 11, 2009 as Instrument No. 1323461, records of Bonneville County, Idaho.
11. Deed of Trust dated August 15, 2008, to secure an original indebtedness of \$250,000.00, and any other amounts and/or obligations secured thereby
Recorded: August 25, 2008, as Instrument No. 1309847
Grantor: Teton View Golf Estates, LLC, a Utah limited liability company
Trustee: Idaho Title and Trust, Inc.
Beneficiary: Idaho Development, LLC, a Utah limited liability company, its successors and assigns
12. Claim of lien.
Claimant: Depatco, Inc., an Idaho corporation
Amount: \$ 818,436.02
For: labor and materials
Recorded: October 20, 2008, as Instrument No. 1314766.

Part II:

13. Claim of lien.
Claimant: Schiess & Associates
Amount: \$ 92,880.71
For: engineering services
Recorded: October 29, 2008, as Instrument No. 1315496.

Litigation Guarantee
Form No. 110-1282 (Rev. 3/31/04)
1100041P129500

Guarantee No.: **294719-IF**
Page No.: 5

14. Claim of lien.
Claimant: HD Supply Waterworks, LTD dba HD Supply Waterworks fka National Waterworks, Inc.
Amount: \$ 201,958.60
For: labor and materials
Recorded: October 30, 2008, as Instrument No. 1315631.

Litigation Guarantee
Form No. 110-1282 (Rev. 3/31/04)
1100041P129500

Guarantee No.: **294719-IF**
Page No.: 6

SCHEDULE C

Addresses

Paragraph Number: **Schedule A-5**
Recording Information: **Warranty Deed #1292698**
Name and **Teton View Golf Estates, LLC, an Utah Limited Liability Company**
Mailing Address: **6371 N. 5th E., Idaho Falls, Idaho 83401 and 11105 London Derry, Sandy, Utah 84092**

Paragraph Number: **Schedule B-14**
Recording Information: **Claim of Lien #1315631**
Name and **HD Supply Waterworks, LTD dba HD Supply Waterworks fka National Waterworks, Inc.**
Mailing Address: **C/O Kevin T. Christiansen, Scott-Hookland LLP, P.O. Box 23414, Tigard, OR 97281-3414**

NOTE: Should you have any questions regarding items referred to herein, please contact **Lois Olson**, Title Officer, of **First American Title Company** at **900 Pier View Drive Ste. 110, Idaho Falls, ID 83402**, or call **(208)522-9195**.

Litigation Guarantee
Form No. 110-1282 (Rev. 3/31/04)
1100041P129500

Guarantee No.: 294719-IF
Page No.: 7

SCHEDULE OF EXCLUSIONS FROM COVERAGE OF THIS GUARANTEE

1. Except to the extent that specific assurance are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
 - (a) Defects, liens, encumbrances, adverse claims or other matters against the title, whether or not shown by the public records.
 - (b) (1) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or, (2) Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (1) or (2) are shown by the records of the taxing authority or by the public records.
 - (c) (1) Unpatented mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water, whether or not the matters excluded under (1), (2) or (3) are shown by the public records.
2. Notwithstanding any specific assurance which are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
 - (a) Defects, liens, encumbrances, adverse claims or other matters affecting the title to any property beyond the lines of the land expressly described in the description set forth in Schedule (A), (C) or in Part 2 of this Guarantee, or title to streets, roads, avenues, lanes, ways or waterways to which such land abuts, or the right to maintain therein vaults, tunnels, ramps, or any structure or improvements; or any rights or easements therein, unless such property, rights or easements are expressly and specifically set forth in said description.
 - (b) Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the public records; (1) which are created, suffered, assumed or agreed to by one or more of the Assureds; (2) which result in no loss to the Assured; or (3) which do not result in the invalidity or potential invalidity of any judicial or non-judicial proceeding which is within the scope and purpose of the assurances provided.
 - (c) The identity of any party shown or referred to in Schedule A.
 - (d) The validity, legal effect or priority of any matter shown or referred to in this Guarantee.

GUARANTEE CONDITIONS AND STIPULATIONS

1. Definition of Terms.

The following terms when used in the Guarantee mean:

- (a) the "Assured": the party or parties named as the Assured in this Guarantee, or on a supplemental writing executed by the Company.
- (b) "land": the land described or referred to in Schedule (A) (C) or in Part 2, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A) (C) or in Part 2, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
- (c) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (d) "public records": records established under state statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
- (e) "date": the effective date.

2. Notice of Claim to be Given by Assured Claimant.

An Assured shall notify the Company promptly in writing in case knowledge shall come to an Assured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as stated herein, and which might cause loss or damage for which the Company may be liable by virtue of this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the manner or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any Assured under this Guarantee unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

3. No Duty to Defend or Prosecute.

The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

4. Company's Option to Defend or Prosecute Actions; Duty of Assured Claimant to Cooperate.

Even though the Company has no duty to defend or prosecute as set forth in Paragraph 3 above:

- (a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in (b), or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured, or to prevent or reduce loss or damage to the Assured. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its rights under this paragraph, it shall do so diligently.
- (b) If the Company elects to exercise its options as stated in Paragraph 4(a) the Company shall have the right to select counsel of its choice (subject to the right of such Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this Guarantee.
- (c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.
- (d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, an Assured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such Assured for this purpose. Whenever requested by the Company, an Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

5. Proof of Loss Damage.

In addition to and after the notices required under Section 2 of these Conditions and Stipulations have been provided to the Company, a proof of loss or damage signed and sworn to by the Assured shall be furnished to the Company within ninety (90) days after the Assured shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the matters covered by this Guarantee which constitute the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the Assured to provide the required proof of loss or damage, the Company's obligation to such Assured under the Guarantee shall terminate. In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company, pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.

Litigation Guarantee
Form No. 110-1282 (Rev. 3/31/04)
1100041P129500

Guarantee No.: 294719-IF
Page No.: 8

6. Options to Pay or Otherwise Settle Claims: Termination of Liability.

In case of a claim under this Guarantee, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Liability or to Purchase the Indebtedness.
The Company shall have the option to pay or settle or compromise for or in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee or, if this Guarantee is issued for the benefit of a holder of a mortgage or a lienholder, the Company shall have the option to purchase the indebtedness secured by said mortgage or said lien for the amount owing thereon, together with any costs, reasonable attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of purchase. Such purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the Assured the Company offers to purchase said indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness, together with any collateral security, to the Company upon payment of the purchase price. Upon the exercise by the Company of the option provided for in Paragraph (a) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4, and the Guarantee shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other Than the Assured or With the Assured Claimant.
To pay or otherwise settle with other parties for or in the name of an Assured claimant any claim Assured against under this Guarantee, together with any costs, attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay. Upon the exercise by the Company of the option provided for in Paragraph (b) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4.

7. Determination and Extent of Liability.

This Guarantee is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in this Guarantee and only to the extent herein described, and subject to the Exclusions From Coverage of This Guarantee. The Liability of the Company under this Guarantee to the Assured shall not exceed the least of:

- (a) the amount of liability stated in Schedule A or in Part 2;
- (b) the amount of the unpaid principal indebtedness secured by the mortgage of an Assured mortgagee, as limited or provided under Section 6 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage Assured against by this Guarantee occurs, together with interest thereon; or
- (c) the difference between the value of the estate or interest covered hereby as stated herein and the value of the estate or interest subject to any defect, lien or encumbrance Assured against by this Guarantee.

8. Limitation of Liability.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures any other matter Assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as stated herein.

(c) The Company shall not be liable for loss or damage to any Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

9. Reduction of Liability or Termination of Liability.

All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the amount of liability pro tanto.

10. Payment of Loss.

(a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within thirty (30) days thereafter.

11. Subrogation Upon Payment or Settlement.

Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the Assured shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

12. Arbitration.

Unless prohibited by applicable law, either the Company or the Assured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision or other obligation. All arbitrable matters when the Amount of Liability is \$1,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the Assured. The Rules in effect at Date of Guarantee shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permits a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

13. Liability Limited to This Guarantee; Guarantee Entire Contract.

(a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.

(c) No amendment or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

14. Notices, Where Sent.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at 1 First American Way, Santa Ana, California, 92707.



First American Title Company
900 Pier View Drive Ste. 110, Idaho Falls, ID 83402
Phone (208)522-9195 - Fax (208)529-8965

PRIVACY POLICY

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information – particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its *Fair Information Values*, a copy of which can be found on our website at www.firstam.com.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's *Fair Information Values*. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

First American Title Company
900 Pier View Drive Ste. 110
Idaho Falls, ID 83402
Phone: (208)522-9195 / Fax: (208)529-8965

PR: AFFGRP

Ofc: 15 (3264)

Final Invoice

To: Beard, St. Clair, Gaffney, PA
2105 Coronado
Idaho Falls, ID 83404

Invoice No.: 3264 - 151005637
Date: 04/13/2009
Our File No.: 294719-IF
Title Officer: Lois Olson / LOOLSON
Escrow Officer: /
Customer ID: BSP1

Attention: Shaunie**Your Reference No.:**

RE: Property:
na, Idaho Falls, ID 83401

Liability Amounts
Owners:
Lenders: \$92,000.00

Buyers: Teton View Golf Estates, LLC
Sellers:

Description of Charge	Invoice Amount
Guarantee-Litigation Guarantee	\$577.00

INVOICE TOTAL **\$577.00**

Comments:

Thank you for your business!

*To assure proper credit, please send a copy of this Invoice and Payment to:
Attention: Accounts Receivable Department*

PART OF NE 1/4 OF SECTION 31, TOWNSHIP 3 NORTH, RANGE 38 EAST, B.M.
AN ADDITION TO THE CITY OF IDAHO FALLS, BONNEVILLE COUNTY, IDAHO

First American Title Company
Lansing, Pa. 22 22404

This file is a photographic reproduction of the recorded plat. Its contents assume no liability for variations, if any, with a re-record.



190

Alan R. Harrison
ALAN R. HARRISON LAW, PLLC
497 N. Capital Ave, Suite 210
Idaho Falls, Idaho 83402
Telephone: (208) 552-1165
Fax: (208) 552-1176
(ISB#: 6589)

Attorney for Plaintiff

Instrument # 1306616
IDAHO FALLS, BONNEVILLE, IDAHO
7-22-2008 04:58:11 No. of Pages: 3
Recorded for: ALAN HARRISON
RONALD LONGMORE
Ex-Officio Recorder Deputy
Index to: NOTICE OF LIS PENDENS Fee: 9.00

Instrument # 1306929
IDAHO FALLS, BONNEVILLE, IDAHO
7-25-2008 02:20:19 No. of Pages: 3
Recorded for: ALAN HARRISON
RONALD LONGMORE
Ex-Officio Recorder Deputy
Index to: NOTICE OF LIS PENDENS Fee: 9.00

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

IDAHO DEVELOPMENT, LLC, a Utah
limited liability company,

Plaintiff,

vs.

TETON VIEW GOLF ESTATES, LLC, a
Utah limited liability company;
ROTHCHILD PROPERTIES, LLC, a
Utah limited liability company;
WESTERN EQUITY, LLC, a Utah
limited liability company; LYNN
SPAFFORD, individually; TONY
VERSTEEG, individually;
AMERITITLE COMPANY; ZBS, LLC,
an Idaho limited liability company;
DEPATCO, INC., an Idaho Corporation;
SCHIESS & ASSOCIATES, P.C., an
Idaho Professional Service Corporation;
DOES 1-3, and ALL PERSONS IN
POSSESSION OF REAL PROPERTY
DESCRIBED HEREIN,

Defendants.

Case No. CV-08-4395

LIS PENDENS

NOTICE IS HEREBY GIVEN that an action has been commenced on the 22nd day of July, 2008 in the above entitled District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville, against the above named Defendants by the Plaintiff, Idaho Development, Inc., and which said action is brought for the foreclosure of a deed of trust held by Plaintiff, deed of trust dated February 29, 2008 along with a partial reconveyance dated May 15, 2008, on the following real property situated in Bonneville County, Idaho, to-wit:

Beginning at a point that is South 0°27'09" East 25.00 feet along the section line from the Northeast Corner of Section 31, Township 3 North, Range 38, East of the Boise Meridian, County of Bonneville, State of Idaho, and running thence South 0°27'09" East 913.64 feet along the section line; thence South 89°32'51" West 1641.08 feet; thence South 39°14'56" East 502.03 feet to the 1/16th line of Section 31; thence South 89°00'06" West 104.71 feet to the centerline of the Idaho Canal; thence along the centerline of the Idaho Canal the following four courses: (1) North 36°27'12" West 633.43 feet; (2) North 15°03'08" West 239.69 feet; (3) North 1°10'58" East 246.69 feet; (4) North 2°53'42" East 297.79 feet to a point on the South Right-of-Way line of Tower Road; thence North 89°00'00" East 1839.63 feet along said road Right-of-Way to the POINT OF BEGINNING.

Less and excepting therefrom the following described property:

Beginning at a point that is S00°27'09"E 66.06 feet along the East Section line and N90°00'00"W 50.00 feet from the Northeast Section Corner of Section 31, Township 3 North, Range 38 East of the Boise Meridian, Bonneville County, Idaho, running thence S00°27'09"E 489.76 feet; thence S89°03'37"W 371.44 feet; thence N00°00'00"E 509.78 feet; thence N89°00'00"E 347.27 feet; thence S45°26'14"E 28.50 feet to the point of beginning, containing 4.320 acres.

ALSO:

Beginning at a point that is South 00°16'08" East along the Section line 1066.05 feet from the Northeast Corner of Section 31; Township 3 North Range 38 East of the Boise Meridian, County of Bonneville, State of Idaho; running thence South 89°43'52" West 374.11 feet; thence North 00°49'18" West 127.48 feet; thence North 89°43'52" East 160.34; thence South 00°16'08" East 100.00 feet; thence North 89°43'52" East 182.00 feet; thence North 00°16'08" West 100.00 feet; thence North 89°43'52" east 33.00 feet to the East line of said Section 31; thence South 00°16'08" East along the East line 127.47 feet to the POINT OF BEGINNING.

Said deed of trust was recorded February 29, 2008, as Instrument No. 1291905, records of Bonneville County, Idaho. Said partial reconveyance was recorded on May 15, 2008, as Instrument No. 1299740, records of Bonneville County, Idaho.

DATED this 22nd day of July, 2008.

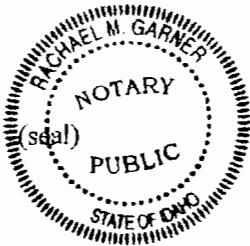
Alan R. Harrison

Alan R. Harrison
Attorney for Plaintiffs

STATE OF IDAHO)
) ss.
County of Bonneville)

On this 22nd day of July, 2008, before me the undersigned, a Notary Public in and for said State, personally appeared Alan R. Harrison, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Rachael M. Garner

Notary Public of Idaho
Residing at: Idaho Falls
Commission Expires: Dec. 13, 2013

Instrument # 1291905
IDAHO FALLS, BONNEVILLE, IDAHO
2008-02-29 04:06:00 PM No. of Pages: 2
Recorded for: ALLIANCE TITLE - IDAHO FA
RONALD LONGMORE Fee 6.00
Ex-Officio Recorder Deputy SSolts
Index To: DEED OF TRUST
Electronically Recorded by Simplifile

Order No. 3030818277LAC

COMMERCIAL LOAN DEED OF TRUST

THIS DEED OF TRUST, Made this February 29, 2008 BETWEEN Teton View Golf Estates, LLC herein called GRANTOR, whose address is: 6371 N. 5th S., Idaho Falls, ID 83401, AND Alliance Title & Escrow Corp., herein called TRUSTEE, AND Idaho Development, LLC, herein called BENEFICIARY, whose address is 2192 Preston Street, Salt Lake City, UT 84106.

WITNESSETH: That Grantor does hereby irrevocably GRANT, BARGAIN, SELL AND CONVEY TO TRUSTEE IN TRUST WITH POWER OF SALE, that property in the county of Bonneville, State of Idaho, described as follows and containing not more than forty acres:

Beginning at a point that is South 0°27'09" East 25.00 feet along the section line from the Northeast Corner of Section 31, Township 3 North, Range 38, East of the Boise Meridian, County of Bonneville, State of Idaho, and running thence South 0°27'09" East 913.64 feet along the section line; thence South 89°32'51" West 1641.08 feet; thence South 39°14'56" East 502.03 feet to the 1/16th line of Section 31; thence South 89°00'06" West 104.71 feet to the centerline of the Idaho Canal; thence along the centerline of the Idaho Canal the following four courses: (1) North 36°27'12" West 633.43 feet; (2) North 15°03'08" West 239.69 feet; (3) North 1°10'58" East 246.69 feet; (4) North 2°53'42" East 297.79 feet to a point on the South Right-of-Way line of Tower Road; thence North 89°00'00" East 1839.63 feet along said road Right-of-Way to the POINT OF BEGINNING.

ALSO:

Beginning at a point that is South 00°16'08" East along the Section line 1066.05 feet from the Northeast Corner of Section 31; Township 3 North Range 38 East of the Boise Meridian, County of Bonneville, State of Idaho; running thence South 89°43'52" West 374.11 feet; thence North 00°49'18" West 127.48 feet; thence North 89°43'52" East 160.34 feet; thence South 00°16'08" East 100.00 feet; thence North 89°43'52" East 182.00 feet; thence North 00°16'08" West 100.00 feet; thence North 89°43'52" East 33.00 feet to the East line of said Section 31; thence South 00°16'08" East along the East line 127.47 feet to the POINT OF BEGINNING.

TOGETHER WITH the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits. For the purpose of securing payment of the indebtedness evidenced by a promissory note, of even date herewith, executed by Grantor in the sum of \$1,100,000.00, with final payment due May 28, 2008, and to secure payment of all such further sums as may hereafter be loaned or advanced by the Beneficiary herein to the Grantor herein, or any or either of them, while record owner of present interest, for any purpose, and of any notes, drafts or other instruments representing such further loans, advances, or expenditures together with interest on all such sums at the rate therein provided. Provided, however, that the making of such further loans, advances or expenditures shall be optional with the Beneficiary, and provided further, that it is the express intention of the parties to this Deed of Trust that it shall stand as continuing security until paid for all such advances together with interest thereon.

A. To protect the security of this Deed of Trust, Grantor agrees:

1. To keep said property in good condition and repair, not to remove or demolish any building thereon, to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereon; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, harrow, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

2. To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released in Grantor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

3. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear.

4. To pay, at least ten days before delinquency all taxes and assessments affecting said property, when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto, all costs, fees and expenses of this Trust. In addition to the payments due in accordance with the terms of the note hereby secured the Grantor shall at the option, and on demand of the Beneficiary, pay each month 1/12 of the estimated annual taxes assessments, insurance premiums, maintenance and other charges upon the property, nevertheless in trust for Grantor's use and benefit and for the payment by Beneficiary of any such items when due. Grantor's failure to pay shall constitute a default under this trust.

5. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, with interest from date of expenditure at the rate of interest specified in the above described promissory note.

6. Should Grantor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Grantor and without releasing Grantor from any obligations hereof, may, make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgement of either appears to be prior or superior hereto; and, in exercising any such powers, or in enforcing this Deed of Trust by judicial foreclosure, pay necessary expenses, employ counsel and pay his reasonable fees.

B. It is mutually agreed that:

1. Any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.
2. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.
3. At any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: Reconvey all or any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.
4. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention upon payment of its fees, Trustee shall reconvey without warranty, the property then held hereunder. The Grantee in such reconveyance may be described as 'the person or persons legally entitled thereto'.
5. As additional security, Grantor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect rents, issues and profits of said property, reserving unto Grantor the right, prior to any default by Grantor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property of any part thereof. In his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon and indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder of invalidate any act done pursuant to such notice.
6. Upon default by Grantor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In the event of default, Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of his election to cause to be sold the herein described property to satisfy the obligations hereof, and shall cause such notice to be recorded in the office of the recorder of each county wherein said real property or some part thereof is situated. Notice of sale having been given as then required by law, and not less than the time then required by law having elapsed, Trustee, without demand on Grantor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee shall deliver to the purchaser its Deed conveying the property so sold, but without any covenant or warranty express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Grantor, Trustee, or Beneficiary, may purchase at such sale. After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title and reasonable counsel fees in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the rate specified in the above described promissory note; all other sums then secured hereby, and the remainder, if any, to the person or persons legally entitled thereto.
7. This Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the holder and owner of the note secured hereby; or, if the note has been pledged, the pledgee thereof. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
8. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor, Beneficiary or Trustee shall be a party unless brought by Trustee.
9. In the event of disqualification or resignation of the Trustee, the Beneficiary may substitute a trustee or trustees to execute the trust hereby created, and when any such substitution has been filed for record in the office of the Recorder of the county in which the property herein described is situated, it shall be conclusive evidence of the appointment of such trustee or trustees, and such new trustee or trustees shall succeed to all of the powers and duties of the trustee or trustees named herein.

Request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale hereunder be mailed to the Grantor at his address hereinbefore set forth.

Teton View Golf Estates, LLC

By: Tony M. Versteeg

State of Idaho)

County of Bonneville) ss.

On this 29th day of February, 2008, before me, a Notary Public in and for said state, personally appeared Tony M. Versteeg known or identified to me to be the Managing Member in the Limited Liability Company known as Teton View Golf Estates, LLC who executed the foregoing instrument, and acknowledged to me that he executed the same in said LLC name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Nellie Gabettis
Notary Public for the State of Idaho
Residing at: Idaho Falls
Commission Expires 03-19-2010

AMT

AMENDMENT OF DEED OF TRUST

THIS AMENDMENT is made by and between Teton View Golf Estates, LLC, and Idaho Development, LLC hereinafter referred to as "BENEFICIARY",

WITNESSETH:

WHEREAS, the Grantor did make, execute and deliver to the Beneficiary a Note secured by that certain Deed of Trust in the amount of One Million, one hundred thousand and no/100 Dollars, (\$1,100,000.00), recorded as Instrument No. 1291905, in the records of Bonneville County, Idaho, covering the premises described as follows:

Beginning at a point that is S 0°27'09" E 25.00 feet along the section line from the Northeast corner of Section 31, Township 3 North, Range 38, East of the Boise Meridian, Bonneville County, Idaho, and running thence S 0°27'09" E 913.64 feet along the Section line; thence S 89°32'51" W 1641.08 feet; thence S 39°14'56" E 502.03 feet to the 1/16th line of Section 31; thence S 89°00'06" W 104.71 feet to the centerline of the Idaho Canal; thence along the centerline of the Idaho Canal the following four courses: (1) N 36°27'12" W 633.43 feet; (2) N 15°03'08" W 239.69 feet; (3) N 1°05'58" E 246.69 feet; (4) N 2°53'42" E 297.79 feet to a point on the South Right-of-Way line of Tower Road; thence N 89°00'00" E 1839.63 feet along said road Right-of-Way to the point of beginning.

ALSO:

Beginning at a point that is S 00°16'08" E along the section line 1066.05 feet from the Northeast corner of Section 31, Township 3 North, Range 38 East of the Boise Meridian, Bonneville County, Idaho; running thence S 89°43'52" W 374.11 feet; thence N 00°49'18" W 127.48 feet; thence N 89°43'52" E 160.34 feet; thence S 00°16'08" E 100.00 feet; thence N 89°43'52" E 182.00 feet; thence N 00°16'08" W 100.00 feet; thence N 89°43'52" E 33.00 feet to the East line of said Section 31; thence S 00°16'08" E along the East line 127.47 feet to the point of beginning.

And

WHEREAS, the parties desire to amend some of the terms and/or provisions of the Note and/or Deed of Trust, and

THEREFORE, in and for good and valuable considerations, the parties agree the terms and conditions of the Deed of Trust above described shall be and are hereby amended and modified as follows:

1. The amount of the Deed of Trust shall be amended to \$850,000.00.

All terms and conditions of the Note and Deed of Trust shall remain the same and unchanged except as amended and/or modified herein.

Dated 3/7/08

GRANTOR:

Teton View Golf Estates, LLC

By [Signature]
Tony Versteeg is authorized signatory
for St Charles Group, Inc. Manager

By [Signature]
Tony Versteeg as Manager of Western
Equity, LLC, Manager

BENEFICIARY:

Idaho Development, LLC

By [Signature]

Instrument # 1292697
IDAHO FALLS, BONNEVILLE, IDAHO
2008-03-10 12:51:00 PM No. of Pages: 2
Recorded for: AMERITITLE IDAHO FALLS
RONALD LONGMORE Fee: 6.00
Ex-Officio Recorder Deputy SSols
Index To: AMENDMENT
Electronically Recorded by Simplifile

This instrument is being filed as an accommodation only. It has not been examined as to its execution, insurability or affect on title.

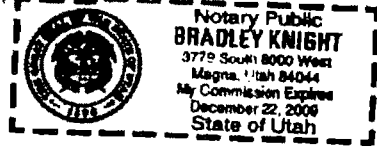
1292697

STATE OF Utah)
COUNTY OF Salt Lake) ss

On this 7th day of March, 2008, before me, the undersigned, personally appeared Tony Versteeg as authorized signatory for St Charles Group, Inc and as Manager of Western Equity, LLC known or identified to me to be the Managing Member(s) of the limited liability company that executed the within instrument, and acknowledged to me that such company executed the same.

[Signature]

Notary Public
Commission Expiration Date: _____

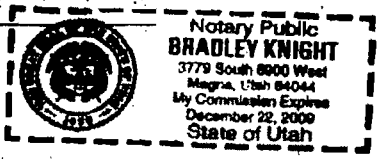


STATE OF Utah)
COUNTY OF Salt Lake) ss

On this 7th day of March, 2008, before me, the undersigned, personally appeared Melinda Boswell - Manager known or identified to me to be the Managing Member(s) of the limited liability company that executed the within instrument, and acknowledged to me that such company executed the same.

[Signature]

Notary Public
Commission Expiration Date: _____



AMT

AMENDMENT OF DEED OF TRUST

THIS AMENDMENT is made by and between Teton View Golf Estates, LLC, and Idaho Development, LLC hereinafter referred to as "BENEFICIARY",

WITNESSETH:

WHEREAS, the Grantor did make, execute and deliver to the Beneficiary a Note secured by that certain Deed of Trust in the amount of One Million, one hundred thousand and no/100 Dollars, (\$1,100,000.00), recorded as Instrument No. 1291905, in the records of Bonneville County, Idaho, covering the premises described as follows:

Beginning at a point that is S 0°27'09" E 25.00 feet along the section line from the Northwest corner of Section 31, Township 3 North, Range 38, East of the Boise Meridian, Bonneville County, Idaho, and running thence S 0°27'09" E 913.64 feet along the Section line; thence S 89°32'51" W 1641.08 feet; thence S 39°14'56" E 502.03 feet to the 1/16th line of Section 31; thence S 89°00'06" W 104.71 feet to the centerline of the Idaho Canal; thence along the centerline of the Idaho Canal the following four courses: (1) N 36°27'12" W 633.43 feet; (2) N 15°03'08" W 239.69 feet; (3) N 1°10'58" E 246.69 feet; (4) N 2°33'42" E 297.79 feet to a point on the South Right-of-Way line of Tower Road; thence N 89°00'00" E 1839.63 feet along said road Right-of-Way to the point of beginning.

ALSO:

Beginning at a point that is S 00°16'08" E along the section line 1066.05 feet from the Northwest corner of Section 31, Township 3 North, Range 38 East of the Boise Meridian, Bonneville County, Idaho; running thence S 89°43'52" W 374.11 feet; thence N 00°49'18" W 127.48 feet; thence N 89°43'52" E 160.34 feet; thence S 00°16'08" E 100.00 feet; thence N 89°43'52" E 182.00 feet; thence N 00°16'08" W 100.00 feet; thence N 89°43'52" E 33.00 feet to the East line of said Section 31; thence S 00°16'08" E along the East line 127.47 feet to the point of beginning.

And

WHEREAS, the parties desire to amend some of the terms and/or provisions of the Note and/or Deed of Trust, and

THEREFORE, in and for good and valuable considerations, the parties agree the terms and conditions of the Deed of Trust above described shall be and are hereby amended and modified as follows:

1. The amount of the Deed of Trust shall be amended to \$850,000.00.

All terms and conditions of the Note and Deed of Trust shall remain the same and unchanged except as amended and/or modified herein.

Dated 3/7/08

GRANTOR:

Teton View Golf Estates, LLC

By

Tony Vanden Berg, President
for Teton View Golf Estates, LLC, Manager

By

Tony Vanden Berg, President
Equity, LLC, Manager

BENEFICIARY:

Idaho Development, LLC

By

Michael Pascoe

Instrument # 1292697

IDAHO FALLS, BONNEVILLE, IDAHO
2008-03-10 12:51:00 PM No. of Pages: 2
Recorded for AMERITITLE - IDAHO FALLS
RONALD LONGMORE Fee \$ 00
Ex-Officio Recorder Deputy SS&S
Idaho Tr. Amendment
Electronically Recorded by Simplifile

This instrument is being filed as an accommodation only. It has not been examined as to its execution, insurability or effect on title.

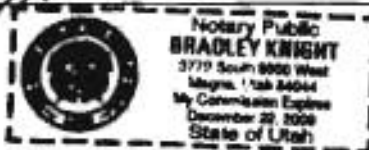
STATE OF Utah)

COUNTY OF Salt Lake)
as

On this 7th day of March, 2008, before me, the undersigned, personally appeared Tony Vorsteeg as authorized signatory for St Charles Group, Inc and as Manager of Western Equity, LLC known or identified to me to be the Managing Member(s) of the limited liability company that executed the within instrument, and acknowledged to me that such company executed the same.

Notary Public

Commission Expiration Date: _____



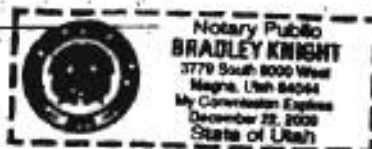
STATE OF Utah)

COUNTY OF Salt Lake)
as

On this 7th day of March, 2008, before me, the undersigned, personally appeared William Boswell - Manager known or identified to me to be the Managing Member(s) of the limited liability company that executed the within instrument, and acknowledged to me that such company executed the same.

Notary Public

Commission Expiration Date: _____



AMT 10-44357 A



Instrument # 1292699
IDAHO FALLS, BONNEVILLE, IDAHO
2008-03-10 12:51:00 PM No. of Pages: 4
Recorded for: AMERITITLE - IDAHO FALLS
RONALD LONGMORE Fee 12.00
Ex-Officio Recorder Deputy SSolis
Index To: DEED OF TRUST
Electronically Recorded by Simplifile

DEED OF TRUST

THIS DEED OF TRUST, Dated March 4, 2008, between **Teton View Golf Estates, LLC, an Idaho Limited Liability Company**, herein called GRANTOR; whose address is **6371 N 5th E, Idaho Falls, ID 83401**; **AmeriTitle** herein called TRUSTEE, and **ZBS, LLC, an Idaho Limited Liability Company**, herein called BENEFICIARY.

WITNESSETH: That Grantor does hereby irrevocably GRANT, BARGAIN, SELL AND CONVEY TO TRUSTEE IN TRUST, WITH POWER OF SALE, that property in the County of **Bonneville**, State of Idaho, described as follows and containing not more than forty acres:

Beginning at a point that is S 0°27'09" E 23.00 feet along the section line from the Northeast corner of Section 31, Township 3 North, Range 38, East of the Boise Meridian, Bonneville County, Idaho, and running thence S 0°27'09" E 913.64 feet along the Section line; thence S 89°32'51" W 1641.08 feet; thence S 39°14'56" E 502.03 feet to the 1/16th line of Section 31; thence S 89°00'06" W 104.71 feet to the centerline of the Idaho Canal; thence along the centerline of the Idaho Canal the following four courses: (1) N 36°27'12" W 633.43 feet; (2) N 15°03'08" W 239.69 feet; (3) N 1°10'58" E 246.69 feet; (4) N 2°53'42" E 297.79 feet to a point on the South Right-of-Way line of Tower Road; thence N. 89°00'00" E 1839.63 feet along said road Right-of-Way to the point of beginning.

ALSO:

Beginning at a point that is S 00°16'08" E along the section line 1066.05 feet from the Northeast corner of Section 31, Township 3 North, Range 38 East of the Boise Meridian, Bonneville County, Idaho; running thence S 89°43'52" W 374.11 feet; thence N 00°49'18" W 127.48 feet; thence N 89°43'52" E 160.34 feet; thence S 00°16'08" E 100.00 feet; thence N 89°43'52" E 182.00 feet; thence N 00°16'08" W 100.00 feet; thence N 89°43'52" E 33.00 feet to the East line of said Section 31; thence S 00°16'08" E along the East line 127.47 feet to the point of beginning.

TOGETHER WITH the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits.

FOR THE PURPOSE OF SECURING payment of the indebtedness evidenced by a promissory note, of even date herewith, executed by Grantor in the sum of ****SIX HUNDRED FORTY THOUSAND AND NO/100ths** Dollars, with interest thereon**, final payment due **02/28/2009**, and to secure payment of all such further sums as may hereafter be loaned or advanced by the Beneficiary herein to the Grantor herein, or any or either of them, while record owner of present interest, for any purpose, and of any notes, drafts or other instruments representing such further loans, advances or expenditures together with interest on all such sums at the rate therein provided. PROVIDED, HOWEVER, that the making of such further loans, advances or expenditures shall be optional with the Beneficiary, and further provided that it is the express intention of the parties to this Deed of Trust that it shall stand as continuing security until paid for all advances together with interest thereon.

The date of maturity of the debt secured by this instrument is the date, stated above, on which the final installment of said note becomes due and payable. In the event the within described property, or any part thereof, or any interest therein is sold, agreed to be sold, conveyed, assigned, or alienated by the grantor without first having obtained the written consent or approval of the beneficiary, then, at the beneficiary's option, all obligations secured by this instrument, irrespective of the maturity dates expressed therein or herein, shall become immediately due and payable.

A. To protect the security of this Deed of Trust, Grantor agrees:

1. To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

2. To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of beneficiary the entire amount so collected or any part thereof may be released to Grantor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

3. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear.

4. To pay, at least ten days before delinquency all taxes and assessments affecting said property, and when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto, and all costs, fees and expenses of this Trust. In addition to the payments due in accordance with the terms of the note hereby secured the Grantor shall, at the option, and on demand of the Beneficiary, pay each month 1/12 of the estimated annual taxes, assessments, insurance premiums, maintenance and other charges upon the property, nevertheless in trust for Grantor's use and benefit and for the payment by Beneficiary of any such items when due. Grantor's failure so to pay shall constitute a default under this Deed of Trust.

5. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof with interest from date of expenditure at lesser of 9.0000% per annum.

6. Should Grantor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Grantor and without releasing Grantor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, or in enforcing this Deed of Trust by judicial foreclosure, pay necessary expenses, employ counsel and pay counsel's reasonable fees.

B. It is mutually agreed that:

1. Any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such monies received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

2. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive the right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

3. At any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and of this deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey all or any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

4. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said note to Trustee for cancellation and retention and upon payment of its fees,

Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in any reconveyance executed under this Deed of Trust of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto".

5. As additional security, Grantor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Grantor the right, prior to any default by Grantor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6. Upon default by Grantor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In the event of default, Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of his election to cause to be sold the herein described property to satisfy the obligation hereof, and shall cause such notice to be recorded in the office of the recorder of each county wherein said real property or some part thereof is situated.

Notice of sale having been given as then required by law, and not less than the time then required by law having elapsed, Trustee, without demand on Grantor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Grantor, Trustee or Beneficiary, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including cost of evidence of title and reasonable counsel fees in connection with sale, Trustee shall apply the proceeds of sale to payments of: all sums expended under the terms hereof, not then repaid, with accrued interest thereon; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

7. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the holder and owner of the note secured hereby; or, if the note has been pledged, the pledgee thereof. In this Deed of Trust, whenever the context so requires, the gender used shall also include the masculine, feminine and/or neuter, and the singular number includes the plural.

8. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor, Beneficiary or Trustee shall be a party unless brought by Trustee.

9. In the event of dissolution or resignation of the Trustee, the Beneficiary may substitute a trustee or trustees to execute the trust hereby created, and when any such substitution has been filed for record in the office of the Recorder of the county in which the property herein described is situated, it shall be conclusive evidence of the appointment of such trustee or trustees and such new trustee or trustees shall succeed to all of the powers and duties of the trustee or trustees named herein.

Request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale hereunder be mailed to the Grantor at the address of Grantor, which is set forth above.

GRANTOR(S):

Teton View Golf Estates, LLC

by

St Charles Group, Inc. by

by

Western Equity, LLC. by

STATE OF Idaho

COUNTY OF Bonneville)ss

On this 4th day of March, 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared Tony Versteg as authorized signatory of St Charles Group Inc. and Tony Versteg as Manager of Western Equity, LLC as the Managers of Teton View Golf Estates, LLC a Limited Liability Company, known or identified to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same in such capacities.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this instrument first above written.

M. Bradley
Notary Public

Residing at: Pingree

Commission Expires: 11/1/12

Read and approved

Stacy

MARCI J. BRADLEY
NOTARY PUBLIC
STATE OF IDAHO

1297929

ANNEXATION AGREEMENT
Teton View Estates, Division No. 1

AGREEMENT, made this 25th day of April, 2008, by and between the CITY OF IDAHO FALLS, a municipal corporation, hereinafter called "CITY," P.O. Box 50220, Idaho Falls, Idaho 83405, and Teton View Golf Estates, LLC, hereinafter called "DEVELOPER," whose mailing address is 11105 So. London Derry Drive, Sandy, Utah, 84092.

W I T N E S S E T H:

WHEREAS, Developer is the sole owner, in law or equity, of a certain tract of land in the County of Bonneville, State of Idaho, which land (hereafter referred to as the "Subdivision") is more particularly described in Exhibit A attached hereto and by this reference made a part hereof; and,

WHEREAS, Developer has requested the Subdivision be annexed to the City and has submitted a plat bearing the Subdivision name described in the caption of this Agreement; and,

WHEREAS, the City Engineer and the Idaho Falls Planning and Zoning Commission have recommended such annexation be granted subject to certain requirements and obligations on the part of Developer; and

WHEREAS, the City is willing to annex the Subdivision to the City of Idaho Falls, Idaho, subject to the terms and conditions of this Agreement and the Special Conditions attached hereto;

Instrument # 1297929
IDAHO FALLS, BONNEVILLE, IDAHO
4-28-2008 04:02:16 No. of Pages: 10
Recorded for: CITY OF IDAHO FALLS
RONALD LONGMORE Fee: 0.00
Ex-Officio Recorder Deputy
Index to AGREEMENT

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein, the parties agree as follows:

1. **Annexation.** The City agrees to annex the Subdivision to the City of Idaho Falls, subject to Developer's performance of the terms and conditions of this Agreement.

2. **Improvement Plans.** Developer has filed and the City Engineer has approved a complete set of subdivision improvement plans, (hereafter referred to as the "Improvement Plans") showing all streets, sewer lines, water lines, storm drains, street signs, traffic control devices, barricades and other public improvements contemplated within the Subdivision. The Improvement Plans shall also show the proposed location of other public utilities (telephone, gas and electricity) and irrigation facilities affected by the development of the Subdivision. Such Improvement Plans are incorporated herein by reference as though set out in full.

3. **Construction of Public Improvements.** Unless otherwise agreed in the Special Conditions, Developer will, at its expense, design and construct all public improvements shown in the Improvement Plans. Unless otherwise agreed in writing by the City Engineer, Developer will construct all public improvements within the Subdivision in strict accordance with the Improvement Plans and the City Standard Engineering Drawings and Specifications (hereafter referred to as the "Standard Specifications") in effect at the time the construction is accomplished. The Standard Specifications are incorporated herein by reference as though set out in full.

4. **Permits.** Developer shall obtain all right-of-way, excavation or other permits required by local ordinance and comply with all requirements therein with respect to the timely performance of the work governed by such permits.

5. **Completion of Public Improvements.** Developer agrees that upon a finding by the City Council, duly entered in the official minutes of the proceedings of the City Council, that a portion or portions or the entirety of such public improvements need to be completed in the interest of the public health, welfare or safety, Developer will forthwith construct such public improvements. If Developer does not commence construction of such public improvements within a reasonable time after such finding is made or if Developer does not complete such construction within a reasonable time thereafter, the City may construct or complete such facilities at Developer's expense. The City Council shall not make such finding unless Developer has been given at least ten (10) days advance written notice of the date and place of the meeting and Developer has been given an opportunity to be heard at such meeting. At or before the meeting, the City Engineer shall furnish Developer a cost estimate for completing the required portion or portions of such public improvements.

6. **Inspection.** Developer will retain a professional engineer (hereafter referred to as the "Project Engineer") licensed within the State of Idaho to supervise, inspect and test the construction of all public improvements within the Subdivision in order to ensure such improvements are constructed in accordance with this Agreement, the Improvement Plans and the Standard Specifications. Developer will not materially deviate from the

Improvement Plans or Standard Specifications without the express written approval of the City Engineer.

7. **Corrected Improvement Plans.** Prior to acceptance of the Subdivision, Developer will file "As Constructed" Improvement Plans (hereafter referred to as the "Corrected Improvement Plans") with the City Engineer. Such Corrected Improvement Plans shall be prepared by the Project Engineer and shall show the actual constructed location of all public improvements within the Subdivision including the horizontal and vertical location of all water, sewer and storm drain lines, individual building service lines, curb and gutter alignment and street grades. Such Corrected Improvement Plans shall also specifically show all changes between the original Improvement Plans and the public improvements as actually constructed. The Project Engineer shall also certify upon the Corrected Improvement Plans that such Plans correctly show all public improvements as actually constructed and that such public improvements have been constructed in accordance with the Standard Specifications in effect at the time such construction was accomplished. The Project Engineer shall also deliver to the City Engineer all compaction reports, daily construction logs, reports, written tests, analysis and other data as may be necessary to verify or support the certification of the Project Engineer.

8. **Acceptance of Subdivision.** Upon satisfactory completion of such public improvements and facilities and Developer's delivery of Corrected Improvement Plans, the City will accept the Subdivision. Such acceptance shall not be valid unless expressly acknowledged in writing by the City Engineer. Except as otherwise expressly provided in

the Special Conditions, upon acceptance of the Subdivision, the City shall assume ownership and control of all public facilities within any dedicated street or public utility right-of-way within the Subdivision. Acceptance of the Subdivision shall not be deemed as a waiver of Developer's failure to fully and completely perform the terms and conditions hereof or as a waiver or release of the warranty set forth below.

9. Warranty. Developer warrants that the materials and workmanship employed in the construction of all public improvements within the Subdivision shall be good and sound and shall conform to generally accepted standards within the construction industry. Such warranty shall extend for a period of one (1) year after acceptance of the Subdivision by the City, provided nothing herein shall limit the time within which the City may bring an action against Developer on account of Developer's failure to construct such improvements in accordance with this Agreement, the Improvement Plans or the Standard Specifications. Developer, and Developer's heirs, successors and assigns, shall and do hereby warrant and agree to defend the quiet and peaceful possession of the City in all easements, rights-of-way, street dedications or other estates conveyed pursuant to the terms of this Agreement or pursuant to the subdivision plat which is the subject hereof, from and against all claims against Developer and Developer's successors or assigns and against every person whomsoever who lawfully holds, or who later lawfully claims to have held, rights in the premises as of the date of this Agreement.

10. Bridge and Arterial Streets Fees. Developer agrees to pay a Bridge and Arterial Streets Fee as provided by Section 10-2-5, City Code, in the amounts and manner

set forth in paragraph SC-1.00 of the Special Conditions.

11. Surface Drainage Fees. Developer agrees to pay a Surface Drainage Fee as provided by Section 10-5-4 City Code in the amount and manner set forth in paragraph SC-2.00 of the Special Conditions.

12. Water and Sewer Main Connection Charges. Developer agrees to pay to the City at the time any separate sanitary sewer service or culinary water service connection to the City sanitary sewer system or culinary water system is requested, all connection fees, main connection charges, and main charges as set forth in the City Code in effect at the time such request for service is made.

13. Failure to Pay Fees. In the event Developer fails or refuses to pay any of the fees, charges or costs set forth herein, the City may disannex any property owned by Developer within the Subdivision or declare the entire unpaid balance immediately due and payable and collect such sums in the manner provided by law, or may pursue any other remedy set forth herein or as may be available at law or in equity. All such remedies shall be cumulative and the City may pursue the same separately or simultaneously as it deems necessary or appropriate. In the event of such acceleration, all sums due shall bear interest at the rate established by law for judgements entered in the State of Idaho.

14. Grant of Security Interest. Developer hereby grants and conveys to the City a lien to secure the payment of any deferred balance of the Bridge and Arterial Streets fees and the Surface Drainage fees, together with interest accrued thereon, provided however if no deferred balance is shown in the Special Conditions this paragraph shall be null and void.

In the event Developer fails to pay such fees, the City may without prior notice, foreclose this Agreement as a mortgage in accordance with the mortgage foreclosure laws of the State of Idaho. Upon request of Developer, the City will execute and deliver a partial release of the lien created herein against any property located within the Subdivision upon payment by Developer of that portion of such fees which bears the same ratio to the then remaining unpaid balance of such fees as the acreage of land to be released bears to the total acreage of land utilized to compute the amount of the Surface Drainage fees. Upon request of Developer, the City will by written agreement, subordinate the lien created hereby to any mortgage, deed of trust or other security device required to secure the payment of any loan or advance made to Developer for the sole purpose of financing the construction of improvements upon the subject property; provided however that the financing institution entity shall first warrant and represent in writing that it understands that the contemplated loan or advances will be used solely for the construction of improvements upon the land and that it will take reasonable precautions usual and customary to the financing and lending industry to ensure that the loan proceeds or advances will not be used for any other purpose. Any prepayments made pursuant to this provision shall be applied in inverse chronological order against the regularly scheduled payments set forth herein, and such payment shall not release Developer of any obligation to make the next regularly scheduled payment.

15. Participation by City. The parties agree that those portions of the water main, the sanitary sewer line, storm drains and street section work (hereafter collectively referred to as the "Shared Work"), the cost of which the City has expressly agreed to pay pursuant to

the Special Conditions, including any water or sewer line or storm line extensions, increased line size or capacity and road width or thickness, are required because of future service needs originating from properties not owned by Developer and located within the vicinity of the Subdivision and that sound planning requires construction thereof at the present time in order to accommodate future expansion and development. In recognition of the cost savings which can be accomplished by construction of such excess capacity and improvements concurrently with the facilities to be constructed for Developer's purposes, and the impracticality or impossibility of constructing such excess capacity and improvements separately or at a later time, Developer agrees to design and construct such facilities subject to the City's agreement to reimburse Developer for a portion of such costs, all as set forth in the Special Conditions. Prior to the commencement of the Shared Work, Developer shall obtain and deliver to the City three independent bona fide bids for the performance of such work from qualified and responsible contractors. Such bids shall be solicited and itemized in a manner which allows clear and specific identification of that portion of the construction work for which the City is responsible. The City shall have no obligation to pay for any portion of the costs of the Shared work unless prior to the commencement of the work the parties have expressly agreed in writing to a specific amount for which the City will reimburse the Developer. Payment of such costs by the City shall be due within thirty (30) days from acceptance of the Subdivision by the City and delivery of an itemized statement to the City setting forth in detail the total amount of the costs for which the City is responsible.

16. Special Conditions. In recognition of the unique circumstances relative to this Subdivision the parties agree to the Special Conditions attached hereto and by this reference made a part hereof.

17. Irrigation Facilities. Developer shall relocate or reconstruct all ditches, headgate structures, culverts, siphons, drywells or other similar appurtenant structures that will be impaired or otherwise disturbed by the construction of this Subdivision. Developer shall also obtain the consent of all persons or entities who have any water right affected by the development of the Subdivision or who otherwise exercise control over such structures. Developer will also indemnify and hold the City harmless from any action, claim, demand or cost of any kind, including attorney's fees and court costs, arising from the relocation or reconstruction of such facilities or Developer's failure to properly relocate or reconstruct such facilities.

18. Relocation of Power Lines. Developer shall relocate at its expense all existing electric utility poles or other utility lines or fixtures necessary to construct the public street access to this Subdivision or other public improvements shown on the Improvement Drawings.

19. Construction Schedule Change. Any modification to the public improvements shown in the Improvement Drawings or to the construction schedule or to the construction phase limits shall be approved by the City Engineer. Prior to said approval, revised Improvement Drawings shall be resubmitted to the City Engineering Department showing the proposed changes.

20. Taxes and Assessments. Developer shall pay all real property taxes and assessments levied or assessed against any interest in real property which Developer has agreed to convey to the City pursuant to this Agreement. Such taxes and assessments shall be paid prior to the acceptance of the Subdivision by the City.

21. Occupancy. No building within the Subdivision shall be used or occupied for any purpose other than for the construction of such building or structure, unless all public improvements within the Subdivision have been completed and accepted by the City Engineer. The City may withhold Certificates of Occupancy until all such work has been completed. Nothing herein shall prevent the use of a model home for the purpose of Developer's sales promotional efforts provided the home is not occupied for residential purposes.

22. Default. In the event Developer fails to comply with the terms and conditions hereof in any material respect, the City may, without further notice to Developer, exercise any or all of the following remedies:

- A. Withhold the issuance of any building permit or certificate of occupancy of any structure located within the Subdivision;
- B. Withhold the connection of water, sewer or electric service to any property located within the Subdivision;
- C. Refuse to accept public ownership and maintenance of public improvements within the Subdivision and record a notice of such action with the Bonneville County Recorder's office;

- 7/10/2000 2:00:15 PM
- D. Issue a stop work order for any building under construction within the Subdivision;
 - E. Withhold reimbursement of Subdivision inspection fees collected pursuant to Section 10-1-19 of the City Code;
 - F. Bring an action for damages, injunctive relief, specific performance or any other remedy available at law or in equity;

All of the above remedies are cumulative and to the extent not wholly inconsistent with each other, may be enforced simultaneously or separately, at the sole discretion of the City.

23. Notices. Any notice required by this Agreement shall be mailed to the receiving party at the address set forth above or such other address as may be delivered to the sending party in writing. Such notice shall be mailed by certified mail, return receipt requested, postage prepaid and addressed as set forth above and shall be deemed received upon its deposit in the United States mail in such manner.

24. Recording Fees. Prior to the approval of the Subdivision plat by the City Engineer, Developer shall pay to the City all recording fees necessary to record this Agreement with the Bonneville County Recorder's office.

25. Storm Water Discharge Certification. Prior to the acceptance and approval of the Improvement Plans, Developer shall obtain the certification of any Irrigation District, canal company or other entity into which any storm water from the Subdivision will be discharged. The certification shall state that such water delivery entity has reviewed and approved the Improvement Plans and that the discharge of storm waters from the Subdivision

into their canal or ditch in the manner shown in the Improvement Plans is approved and accepted by such entity.

26. Conflict with Standard Specifications. In the event of any conflict between the terms of this Agreement or the Improvement Plans and the Standard Specifications, the terms of this Agreement or the Improvement Plans shall prevail over any contrary provision of the Standard Specifications. In the event of any conflict between the terms of this Agreement and the Improvement Plans, the terms of this Agreement shall prevail.

27. Covenants Appurtenant to the Land. All covenants and conditions set forth herein shall be appurtenant to and run with the Subdivision and shall be binding upon Developer's heirs, successors or assigns.

28. Governing Law. This Agreement shall be governed by the laws of the State of Idaho. The venue for any action arising out of this Agreement shall be exclusively in the District Court of the Seventh Judicial District of the State of Idaho, Bonneville County or in the United States District Court for the District of Idaho.

29. Entire Agreement. This writing evidences the final and complete agreement between the parties and no other prior statement, representation or understanding shall be binding upon the parties unless expressly set forth herein.

30. Effective Date. This Agreement shall become valid and binding only upon its approval by the City Council of the City and upon its execution by the Mayor.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

ATTEST:

CITY OF IDAHO FALLS

Rosemarie Anderson

Rosemarie Anderson
City Clerk

By: Jared Fulbright

Jared Fulbright
Mayor



"DEVELOPER"
TETON VIEW GOLF ESTATES, LLC

By: Jeff Barton

Jeff Barton
Manager

APPROVED AS TO FORM:

Shan B. Perry

Shan B. Perry
Assistant City Attorney

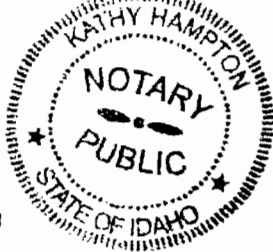
Steve Anderson

Steve Anderson
Engineering Administrator

STATE OF IDAHO)
)ss.
County of Bonneville)

On this 25th day of April, 2008, before me, the undersigned, a Notary Public for Idaho, personally appeared JARED FUHRIMAN known to me to be the Mayor of the City of Idaho Falls, the municipal corporation that executed the foregoing document, and acknowledged to me that such city executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



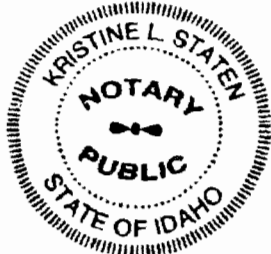
(SEAL)

Kathy Hampton
Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: 01-03-2014

STATE OF IDAHO)
)ss.
County of Bonneville)

On this, 24 day of April, 2008, before me, the undersigned, a Notary Public for Idaho, personally appeared JEFF BURTON, known or identified to me to be the manager of Teton View Golf Estates, LLC, and the member or one of the members who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that such member executed the same in said limited liability company's name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



(SEAL)

Kristine L. Staten
Notary Public for Idaho
Residing at: Idaho Falls, ID 83402
My commission expires: 8-1-2012

EXHIBIT A**TETON VIEW ESTATES, DIVISION NO. 1**

Beginning at a point that is S00°27'09"E 25.00 feet from the Northeast Section Corner of Section 31, Township 3 North, Range 38 East of the Boise Meridian, Bonneville County, Idaho, running thence S00°27'09"E 913.64 along the East Section Line; thence S89° 32' 51"W 215.00 feet; thence S00°27'09"E 99.94 feet; thence N89°32'51"E 182.00 feet; thence S00°27'09"E 27.47 feet; thence S89°32'51"W 341.11 feet; thence N01°00'19"W 127.42 feet; thence S89°32'51"W 1413.98 feet; thence N36° 38' 38"W 116.19 feet; thence N15°14'53"W 260.01 feet; thence N01°00'18"E 255.52 feet; thence N02°41'50"E 280.33 feet; thence N02°25'59"E 15.16 feet; thence N89°00'18"E 1901.74 feet to the Point of Beginning.

Containing 40.015 acres.

4/13/2008 2:00:12 PM FRID 12/000 12/000 12/000

SPECIAL CONDITIONS FOR TETON VIEW ESTATES, DIVISION NO. 1

S-C 1.00 Arterial Street and Bridge Fee. The Bridge and Arterial Streets fee for this Subdivision is \$21,812.50 (79 Lots (R-1) at \$200 per Lot = \$15,800 plus 2.405 Acres at \$2500 per Acre = \$6,012.50), payable as follows:

<u>Due Date</u>	<u>Payment Amount</u>
Upon execution hereof	\$21,812.50

S-C 2.00 Surface Drainage Fees. The surface drainage fee for this Subdivision is \$9,406.15 (1,254,153.24 square feet net area at \$.0075 per square foot), payable as follows:

<u>Due Date</u>	<u>Payment Amount</u>
Upon execution hereof	\$ 9,406.15

S-C 3.00 Traffic Signs. Developer agrees to install all street signs designating the names of all streets within the Subdivision. Developer also agrees to pay the sum of \$750 simultaneously upon execution hereof, in consideration of the installation by the City of all traffic control signs necessary for the control of vehicular and pedestrian traffic within the Subdivision. Street signs designating the name of public streets shall be constructed with white letters over green background. Street signs designating the name of private streets shall be constructed with white lettering over blue background. Such signs shall be installed in the manner and locations as directed by the City Engineer.

S-C 4.00 Sewer Line Construction. Developer shall design and construct at his sole expense all sewer mains and appurtenances required to provide sewer service to and within the Subdivision in accordance with the City Standard Drawings and Specifications and as shown on the Improvement Drawings filed with and approved by the City Engineer. Upon completion thereof, Developer shall furnish the City with a certificate signed by a licensed professional engineer, licensed to practice in the State of Idaho, certifying that the sewer mains and appurtenances have been constructed in accordance with such specifications.

S-C 5.00 Water Line Construction. Developer shall design and construct at his sole expense all water mains and appurtenances required to provide water service to and within the Subdivision in accordance with the City Standard Drawings and Specifications, and upon completion thereof, Developer shall furnish the City with a certificate signed by a licensed professional engineer, licensed to practice in the State of Idaho, certifying that the water mains and appurtenances have been constructed in accordance with such specifications.

3/19/2000 2:00:12 PM PAGE 10/000

S-C 6.00 Subdivision Street Section Improvements. Developer shall be responsible for designing and constructing the street section improvements inside the boundaries of the subdivision. The full street section throughout the development shall be constructed as shown on the Improvement Drawings filed with and approved by the City Engineer. The pavement thickness for the development shall be 2 inches of asphalt plantmix pavement over 6 inches of ¾ inch crushed aggregate base material and shall include placement of subgrade separation geotextile, class 2. The Developer shall be responsible for all tapers and appropriate signing necessary to transition from Tower Road and Lewisville Highway to the proposed roadways, as shown on the improvement plans filed with and approved by the City Engineer. Such improvements shall be commenced within a reasonable time after the City makes demand upon Developer and shall be expeditiously prosecuted and completed within a reasonable time thereafter. The improvements shall be in accordance with the City of Idaho Falls Standard Specifications and Drawings in affect at the time the improvements are commenced. The design shall be approved by the City Engineer prior to construction.

S-C 7.00 Arterial Street Improvements. Developer shall be responsible for the street improvements to 65th North (Tower Road) and 5th East (Lewisville Highway) adjacent to this development, including curb and gutter, sidewalk and storm drain facilities. Recognizing that a portion of the future and current traffic on these streets originates from properties outside the Subdivision, Developer shall be responsible only for the design and construction cost of Curb and gutter, sidewalk and storm drainage facilities, at such time as 65th North (Tower Road) and 5th East (Lewisville Highway) are constructed.

S-C 8.00 Turn Lanes. Developer shall be responsible for all signing and striping of turn lanes as required and as shown on the Improvement Plans, as approved by the City engineer. Said signing and striping shall conform to the Manual on Uniform Traffic Control Devices (MUTCD).

S-C 9.00 Relocation of utility Lines. Developer shall relocate (if necessary); at Developer expense all electric utility poles or other utility lines or fixtures necessary to construct the public improvements and street sections shown on the Improvement Drawings.

S-C 10.00 Electric Utility Lines. Subject to the dedication or conveyance to the City of all necessary easements for the operation of electric utility lines and appurtenances, the City will make electric service available to all structures located in the Subdivision and will operate and maintain such electric utility lines and appurtenances, all in accordance with the City Code. The City will not provide or maintain illumination for private streets

S-C 11.00 Storm System. The Developer will design and construct storm sewer main lines in accordance with the City's Storm Water Runoff Policy and in accordance with the Improvement Drawings and Specifications filed with and approved by the City Engineer. Storm water runoff from this subdivision shall drain to the proposed storm ponds located in Teton View Estates Division No. 1. Operation and maintenance of said ponds shall be the responsibility of the Developer, his heirs and or assigns.

S-C 12.00. Reimbursement of Water Main Charges. Upon connection of water service to any property owned by any person other than Developer and fronting upon that portion of the Tower Road and Lewisville Highway right-of-way in which Developer has constructed a water main, the City will, to the extent permitted by law, and upon written request of Developer, pay to Developer all water main connection charges collected by the City from the owners of such property, pursuant to Section 8-4-14(c), City Code, as the same currently exists or may be amended hereafter.

S-C 13.00. Reimbursement of Sewer Main Charges. Upon connection of sewer service to any property owned by any person other than Developer and fronting upon that portion of the Tower Road and Lewisville Highway right-of-way in which Developer has constructed a sewer main, the City will, to the extent permitted by law, and upon written request of Developer, pay to Developer all sewer main connection charges collected by the City from the owners of such property, pursuant to Section 8-1-23(c), City Code, as the same currently exists or may be amended hereafter.

S-C 14.00. Masonry Wall. A masonry wall at least six feet in height shall be built on the west property line of Lot 25, Block 6, and the west property line of Lot 26, Block 6, should the latter lot be zoned commercial.

S-C 15.00. Pedestrian Walkway. Developer, at developer expense, shall construct an eight (8) foot wide concrete walkway on Lot 7, Block 2 of this Subdivision. Said walkway shall provide pedestrian access from Copeland Circle to the storm water retention pond on Lot 11, Block 2.

S-C 16.00. Oversize of Water Lines. Developer agrees to design and construct approximately 5600 lineal feet of 16-inch diameter ductile iron water line within the Lewisville Highway (15th East) and Tower Road (62th North) rights-of-way. All as shown on the improvement Plans. The City acknowledges that an 8-inch diameter water line is adequate to serve this Subdivision; however, sound planning requires construction of a 16-inch diameter water main to serve properties adjacent thereto. The City agrees to reimburse Developer for that portion of the material costs of constructing such 16-inch diameter water line which exceeds the material costs for constructing an 8-inch diameter water line, subject to the limitations set forth in paragraph 15 of this Agreement. The obligation of the City to participate in such costs shall be limited solely to the materials costs and shall not include any participation in design and construction costs. In no event shall the City have any obligation to pay any portion of such costs which is not specifically approved and authorized by the City Engineer in writing prior to the commencement of such work. In procuring the bids required under such Paragraph 15, Developer shall obtain and deliver to the City three itemized bids, each of which separately identifies the costs for such 8-inch and 16-inch diameter water lines.

S-C 17.00. Oversize of Sanitary Lines. Developer agrees to design and construct approximately 2700 lineal feet of 12-inch diameter sanitary sewer line within the Tower Road (65th North) right-of-way. All as shown on the improvement Plans. The City acknowledges that an 8-inch diameter sanitary sewer line is adequate to serve this Subdivision; however, sound planning requires construction of a 12-inch diameter sanitary sewer line to serve properties adjacent thereto. The City agrees to reimburse Developer for that portion of the material costs of constructing such 12-inch diameter sanitary sewer line which exceeds the material costs for constructing an 8-inch diameter sanitary sewer line, subject to the limitations set forth in paragraph 15 of this Agreement. The obligation

of the City to participate in such costs shall be limited solely to the materials costs and shall not include any participation in design and construction costs. In no event shall the City have any obligation to pay any portion of such costs which is not specifically approved and authorized by the City Engineer in writing prior to the commencement of such work. In procuring the bids required under such Paragraph 15, Developer shall obtain and deliver to the City three itemized bids, each of which separately identifies the costs for such 8-inch and 12-inch diameter sanitary sewer lines.

RECORDING REQUESTED BY
First American Title Company

AND WHEN RECORDED MAIL TO:
First American Title Company
900 Pier View Drive Ste. 110
Idaho Falls, ID 83402

Instrument # 1309846
IDAHO FALLS, BONNEVILLE, IDAHO
2008-08-25 04:59:00 PM No. of Pages: 7
Recorded for: FIRST AMERICAN TITLE - ID
RONALD LONGMORE Fee: 21.00
Ex-Officio Recorder Deputy RAVERY
Index To: DEED OF TRUST
Electronically Recorded by Simplifile

Space Above This Line for Recorder's Use Only

File No. 266311-IF (Re)

DEED OF TRUST

THIS DEED OF TRUST, made this 08/15/2008, between Toban View Golf Estates, LLC, a Utah limited liability company, herein called GRANTOR(S), whose address is PO Box 711944, Salt Lake City, UT 84171, and First American Title Company, herein called TRUSTEE, and Sandra A. MacArthur Trustee of the Sandra A. MacArthur Family Trust, herein called BENEFICIARY, whose address is 904 East 190 South, Springville ID, 84662.

WITNESSETH: That Grantor does hereby irrevocably GRANT, BARGAIN, SELL AND CONVEY TO TRUSTEE IN TRUST, WITH POWER OF SALE, that property in the County of Bonneville, State of Idaho, described as follows and containing not more than eighty acres in area:

BEGINNING AT A POINT THAT IS S89°27'09"E 66.06 FEET ALONG THE EAST SECTION LINE AND N89°09'00"W 59.00 FEET FROM THE NORTHEAST SECTION CORNER OF SECTION 31, TOWNSHIP 3 NORTH, RANGE 38 EAST OF THE BOOSE MERIDIAN, BONNEVILLE COUNTY, IDAHO; RUNNING THENCE S89°27'09"E 489.76 FEET; THENCE S89°03'37"W 371.44 FEET; THENCE N89°09'00"E 588.76 FEET; THENCE N89°09'00"E 347.27 FEET; THENCE S45°26'14"E 28.90 FEET TO THE POINT OF BEGINNING

TOGETHER WITH all the tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in anywise appertaining, and the rents, issues, and profits thereof, SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits;

For the purpose of securing:

1. Performance of each agreement of Grantor herein contained.
2. Payment of the indebtedness evidenced by a promissory note, of even date herewith, and any extension or renewal thereof, in the principal sum of two hundred fifty thousand Dollars (\$250,000.00) payable to Beneficiary or order and made by Grantor, the final payment of principal and interest thereof, if not sooner paid, to be finally due and payable February 15, 2009.

Page 1 of 7

266311-IF
First American Title Co.
900 Pier View Dr., Suite 110
Idaho Falls, ID 83402

223

1309846

Deed of Trust
File No. 200811-07 (Bt)

3. To secure payment of all such further sums as may hereafter be loaned or advanced by the Beneficiary herein to the Grantor herein, or any or either of them while record owner of present interest, for any purpose, and any notes, drafts or other instruments representing such further loans, advances or expenditures together with interest on all such sums at the rate therein provided. Provided, however, that the making of such further loans, advances or expenditures shall be optional with the Beneficiary, and provided further, that it is the express intention of the parties to this Deed of Trust that it shall stand as continuing security until paid for all such loans, advances or expenditures together with interest thereon.
- A. To protect the security of this Deed of Trust, Grantor agrees:
 1. To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.
 2. To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Grantor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
 3. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear.
 4. To pay: at least ten days before delinquency, all taxes and assessments affecting said property, when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust. In addition to the payments due in accordance with the terms of the note hereby secured the Grantor shall at the option, and on demand of the Beneficiary, pay each month 1/12 of the estimated annual taxes, assessments, insurance premiums, maintenance and other charges upon the property, nevertheless in trust for Grantor's use and benefit and for the payment by Beneficiary of any such liens when due. Grantor's failure so to pay shall constitute a default under this trust.
 5. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, with interest from date of expenditure at the note rate.
 6. Should Grantor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Grantor and without releasing Grantor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase,

Deed of Trust
File No. 200213-07 (Re)

contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, in enforcing this Deed of Trust by judicial foreclosure, pay necessary expenses, employ counsel and pay his reasonable fees.

B. It is mutually agreed that:

1. Any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.
2. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.
3. At any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey all or any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.
4. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in any reconveyance executed under this Deed of Trust of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto."
5. As additional security, Grantor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Grantor the right, prior to any default by Grantor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
6. Upon default by Grantor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In the event of default, Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of his election to cause to be sold the herein described property to satisfy the

Deed of Trust
File No. 200211-07 (lit)

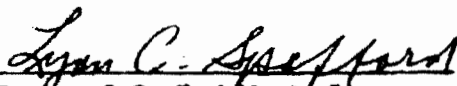
obligations hereof, and shall cause such notice to be recorded in the office of the recorder of each county wherein said real property or some part thereof is situated. Notice of sale having been given as then required by law, and not less than the time then required by law having elapsed, Trustee, without demand on Grantor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including the Beneficiary under the Deed of Trust, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title and reasonable counsel fees in connection with sale, Trustee shall apply the proceeds of sale to payments of: all sums expended under the terms hereof, not then repaid, with accrued interest at the note rate; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

7. This Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns, the term Beneficiary shall mean the owner and holder of the Note secured hereby; or, if the note has been pledged, the pledgee thereof. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
8. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor, Beneficiary or Trustee shall be party unless brought by Trustee.
9. In the event of dissolution or resignation of the Trustee, the Beneficiary may substitute a Trustee or Trustees to execute the trust hereby created, and when any such substitution has been filed for record in the office of the Recorder of the County in which the property herein described is situated, it shall be conclusive evidence of the appointment of such Trustee or Trustees, and such new Trustee or Trustees shall succeed to all of the powers and duties of the Trustee or Trustees named herein.

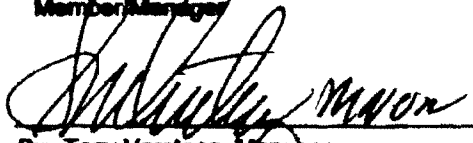
Request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale hereunder be mailed to the Grantor at his address hereinbefore set forth.

Teton View Golf Estates, LLC, a Utah limited
liability company


By: Lynn C. Spafford, Member/Manager

Deed of Trust
File No. 200311-07 (Rd)

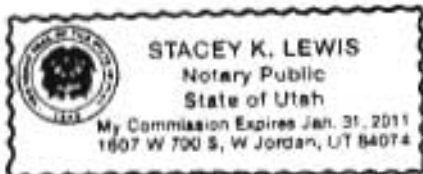
By: WESTERN EQUITY, LLC,
Member Manager


By: Tony Verslag, Manager

Deed of Trust
File No. 2008115-07 (Red)

STATE OF Utah)
COUNTY OF Salt Lake) ss

On this August 28th, 2008, before me, a Notary Public in and for said State, personally appeared Lynn C. Spafford, known or identified to me to be the person whose name is subscribed to the within instrument as one of the Managers/Members of the Teton View Golf Estates LLC, which is known or identified to me to be the entity whose name is subscribed to the within instrument and acknowledged to me that he executed the same in said Limited Liability Company's name.

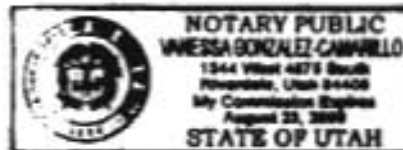


Stacey Lewis
Notary Public of Utah
Residing at: West Jordan
Commission Expires: Jan 31 2011

STATE OF UTAH)
COUNTY OF Salt Lake) ss

On this 19th day of August, 2008, before me, the undersigned, personally appeared Tony Versling, known or identified to me to be the Manager of Western Equity, LLC, a Member/Manager of Teton View Golf Estates, LLC, and the Member/Manager who executed the within instrument on behalf of said Western Equity, LLC who subscribed on behalf of Teton View Golf Estates, LLC.

[Signature]
Notary Public for the State of Utah
Residing at: Salt Lake
Commission Expires: Aug 25 2009



Deed of Trust
File No. 200011-07 (1st)

THE PROMISSORY NOTE OR NOTES, AND ANY EVIDENCES OF FURTHER AND/OR ADDITIONAL ADVANCES MUST BE PRESENTED WITH THIS REQUEST	
_____	Idaho _____, 20____
To: _____ Trustee	
You are hereby authorized and requested to cancel all evidences of indebtedness secured by said Deed of Trust and to reconvey, without warranty, all the estate now held by you thereunder and deliver same to _____.	
The undersigned hereby certifies that _____ is the legal owner and holder of the debt secured by the within Deed of Trust. All same secured thereby have been fully paid and satisfied.	
Address: _____	By: _____
_____	By: _____
Telephone: _____	

Instrument # 1309847

IDAHO FALLS, BONNEVILLE, IDAHO
2008-08-25 04:59:00 PM No. of Pages: 5
Recorded for: FIRST AMERICAN TITLE - ID
RONALD LONGMORE Fee: 15.00
Ex-Officio Recorder Deputy RAVERY
Index To: DEED OF TRUST
Electronically Recorded by Simplifile

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Alan R. Harrison
Alan R. Harrison Law, PLLC
497 N. Capital Ave. Suite 210
Idaho Falls, ID 83402

DEED OF TRUST

THIS DEED OF TRUST (the "Deed of Trust") effective as of August 15th, 2008, by Teton View Golf Estates, LLC, a Utah limited liability company, whose address is 1105 S. Londonderry Drive, Draper, UT 84092, as grantor (the "Borrower"), Idaho Title and Trust, Inc., whose address is 400 Memorial Drive, P.O. Box 50367, Idaho Falls, ID 83405, as trustee (the "Trustee"), and Idaho Development, LLC, a Utah limited liability company, its successors and assigns, whose address is 2192 Preston Street, Salt Lake City, UT 84106, as beneficiary (the "Lender").

RECITALS

Borrower is indebted to Lender in the original principal sum of Two-Hundred Fifty Thousand and no/100 Thousand Dollars (\$250,000.00) with interest thereon, which indebtedness is evidenced and represented by that certain Deed of Trust Note of even date from Borrower to Lender, (the Deed of Trust Note together with all substitutions, consolidations, modifications, replacements, restatements, increases, renewals, and extensions thereof, in whole or in part, shall collectively be referred to as the "Note").

1. **Grants of Security.** In consideration of and in order to secure the repayment, observance, performance and discharge by Borrower of the Secured Obligations as evidenced in the Note, Borrower grants, bargains, sells, aliens, remises, releases, conveys, assigns, transfers, pledges, delivers, sets over, hypothecates, warrants, and confirms to Trustee, in trust, with power of sale, for the benefit and security of Lender, as beneficiary hereunder, subject to the terms and conditions of this Deed of Trust, all estate, right, title and interest that Borrower now has or may later acquire in and to the following described properties, rights and interests and all replacements of, substitutions for, and additions thereto (all of which are referred to below as the "Property"), which is described below, which Property either is located within an incorporated city or village, or does not exceed forty (40) acres.

Beginning at a point that is South 0°27'09" East 25.00 feet along the section line from the Northeast Corner of Section 31, Township 3 North, Range 38, East of the Boise Meridian, County of Bonneville, State of Idaho, and running thence South 0°27'09" East 913.64 feet along the section line; thence South 89°32'51" West 1641.08 feet; thence South 39°14'56" East 502.03 feet to the 1/16th line of Section 31; thence South 89°00'06" West 104.71 feet to the centerline of the Idaho Canal; thence along the centerline of the Idaho Canal the following four courses: (1) North 36°27'12" West 633.43 feet; (2) North 15°03'08" West 239.69 feet; (3) North 1°10'58" East 246.69 feet; (4) North 2°53'42" East 297.79 feet to a point on the South Right-of-Way line of Tower Road; thence North 89°00'00" East 1839.63 feet along said road Right-of-Way to the POINT OF BEGINNING.

ALSO:

Beginning at a point that is South 00°16'08" East along the Section line 1066.05 feet from the Northeast Corner of Section 31; Township 3 North Range 38 East of the Boise Meridian, County of Bonneville, State of Idaho; running thence South 89°43'52" West 374.11 feet; thence North 00°49'18" West 127.48 feet; thence North 89°43'52" East 160.34; thence South 00°16'08" East 100.00 feet; thence North 89°43'52" East 182.00 feet; thence North 00°16'08" West 100.00 feet;

DEED OF TRUST - 1

266311-17
First American Title Co.
900 Pier View Dr., Suite 110
Idaho Falls, ID 83402

230

1309847

thence North 89°43'52" east 33.00 feet to the East line of said Section 31; thence South 00°16'08" East along the East line 127.47 feet to the POINT OF BEGINNING.

Together with all improvements, appurtenances, houses and rents, issues and profits, subject to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits.

2. Borrower Covenants.

2.1 Borrower covenants and agrees to pay the principal and interest in accordance with the terms of the Note, promptly at the times, at the place and in the manner that said principal and interest shall become due, and to promptly and punctually pay all other sums required to be paid by Borrower pursuant to the terms of the Note and this Deed of Trust.

2.2 Borrower shall perform, comply with, and abide by each and every one of the covenants, agreements and conditions contained and set forth in the Note, this Deed of Trust, and the other Loan Documents. Borrower shall keep the Property in good condition and repair, to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws, ordinances, rules, regulations and orders of any governmental authorities having jurisdiction over the Property. Borrower shall at all times shall keep the Property and ground water of the Property free of Hazardous Materials.

2.3 The Property shall be used only for collateral to secure a loan, to be sold, or developed and for no other use without the prior written consent of Lender, which consent may be withheld in Lender's discretion.

2.4 Borrower shall pay all taxes, assessments, and other charges that are or may be hereafter levied or assessed upon or against the Property, when the same shall become due and payable according to law, before the same become delinquent, and before any interest or penalty shall attach thereto. Borrower shall immediately pay and discharge from time to time when the same shall become due all lawful claims and demands of mechanics, materialmen, laborers and others that, if unpaid, might result in, or permit the creation of, a lien, charge or encumbrance upon the Property or any part thereof, to preserve and protect this Deed of trust.

2.5 Borrower shall not permit default or delinquency under any lien, imposition, charge or encumbrance against the Property, even though junior and inferior to the lien of this Deed of Trust; provided however, the foregoing shall not be construed to permit any other lien or encumbrance against the Property.

2.6 Borrower shall obtain and maintain, or cause to be maintained, insurance for Borrower and the Property providing fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Grantor. Such application or release shall not constitute a waiver of any part thereof or notice of default hereunder or invalidate any act done pursuant to such notice. Such other insurance with respect to the Property against loss or damage of the kinds from time to time customarily insured against and in such amounts as are generally available at commercially reasonable premiums and are generally required by institutional lenders for properties comparable to the Property.

2.7 Borrower will appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including the cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear.

2.8 Should Borrower fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Grantor and without releasing Grantor from any obligation hereof, may, make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding

DEED OF TRUST - 2

impairing to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and in exercising any such power, or in enforcing this Deed of Trust by judicial foreclosure, pay necessary expenses, employ counsel and pay his reasonable fees.

2.9 Borrower represents he has good title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same and that Borrower possesses an unencumbered fee simple absolute estate in the Real Property. Borrower shall not enter into any leases on the Property without the consent of Lender. Borrower is current in paying all applicable taxes on the property.

2.10 Borrower shall not, without the prior written consent of Lender, sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Property or any part thereof or permit the Property or any part thereof to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred. Lender agrees to subordinate this Deed of Trust to the commercial loan to be obtained by Texas View for \$250,000.00.

3. Default. The occurrence of any one or more of the following events shall constitute an "Event of Default": (1) Failure to make any payment of (i) interest or principal when due, (ii) any other amount of the Secured Obligations when due, or (iii) the entire amount of the Secured Obligations on or before the Maturity Date. (2) any representation or warranty of Borrower to Lender which is false or misleading in any material respect when made. (3) If Borrower shall make an assignment for the benefit of creditors or if Borrower shall generally not be paying its debts as they become due.

4. Rights and Remedies. Upon the occurrence of any Event of Default, Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in aid to the Property, including, but not limited to the following actions, each of which may, to the extent permitted by applicable law, be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender: (1) Declare the entire unpaid Secured Obligations to be immediately due and payable. (2) Institute proceedings, judicial or otherwise, for the complete foreclosure of this Deed of Trust under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner. (3) Institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the other Loan Documents. (4) Pursue such other remedies as Lender may have under applicable law.

Notwithstanding the provisions of this Section to the contrary, if any Event of Default shall occur, the entire unpaid Secured Obligations shall be automatically due and payable, without any further notice, demand or other action by Lender.

4.1 Foreclosure by Power of Sale. If Lender elects to foreclose by exercise of the power of sale herein contained, Lender shall notify Trustee and shall deposit with the Trustee this Deed of Trust, the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require. Upon receipt of such notice from Lender, Trustee shall cause to be recorded and given all notices required by law. Trustee shall, without demand on Borrower, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Property at the time and place of sale fixed by it in said Notice of Sale either as a whole, or in separate lots or parcels as Trustee shall deem expedient, unless Lender specifies certain terms and conditions that are permitted by applicable law, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. The Trustee may postpone any sale by public announcement at the time and place noticed for the sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including without limitation, Borrower, Trustee or Lender, may purchase at such sale. At any judicial or trustee sale of the

Property, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Secured Obligations.

4.2 **Application of Proceeds.** The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Note, this Deed of Trust or the other Loan Documents, may be applied by Lender to the payment of the Secured Obligations in such priority and proportions as Lender in its discretion shall deem proper, subject to any applicable law.

4.3 **Right to Cure Defaults.** Upon the occurrence of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, cure the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Deed of Trust or collect the Secured Obligations, and the cost and expense thereof (including reasonable attorney's fees to the extent permitted by law), with interest as provided in this Section, shall constitute a portion of the Secured Obligations and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the default rate specified in the Note (the "Default Rate"), for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Secured Obligations and be secured by this Deed of Trust and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

5. **Risk of Loss.** The risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Lender's possession.

6. **Acceptance of Trust; Powers and Duties of Trustee.** Trustee accepts this trust when this Deed of Trust is recorded. From time to time upon written request of Lender and presentation of this Deed of Trust, or a certified copy thereof, for endorsement, and without affecting the personal liability of any person for payment of any indebtedness or performance of any other Obligation, Trustee may, without liability therefor and without notice: (a) recover all or any part of the Property; (b) consent to the making of any map or plan of the Property; (c) join in granting any easement on the Property; (d) join in any declaration of covenants and restrictions; or (e) join in any extension agreement or any agreement subordinating the lien or charge of this Deed of Trust. Nothing contained in the immediately preceding sentence shall be construed to limit, impair or otherwise affect the rights of Trustee in any respect. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Borrower, Lender, or Trustee shall be a party unless brought by Trustee.

7. **Notices.** All notices or other written communications hereunder shall be deemed to have been properly given (a) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof, (b) one (1) business day after having been deposited for overnight delivery with any reputable overnight courier service, or (c) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the addresses listed on this Deed of Trust.

8. **Governing Law.** This Deed of Trust is to be governed by and construed in accordance with the laws of the state where the Property is located and, if controlling, by the laws of the United States and shall be binding upon Borrower, its heirs, personal representatives, successors and assigns and shall inure to the benefit of Lender, its successors and assigns.

9. **Inapplicable Provision.** If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

10. **Attorney's Fees for Enforcement.** Borrower shall pay to Lender on demand any and all expenses, including legal expenses and attorney's fees, incurred or paid by Lender in protecting its interest in the Property or Personal Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property or Personal Property, whether or not any legal proceeding is commenced hereunder or thereunder and whether or not any default or Event of Default shall have occurred and is continuing, together with interest thereon at the Default Rate from the date paid or incurred by Lender until such expenses are paid by Borrower.

11. **Modifications.** This Deed of Trust cannot be changed, altered, amended or modified except by an agreement in writing and in recordable form, executed by both Borrower and Lender.

12. **Entire Agreement.** The Note, this Deed of Trust and the other Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Secured Obligations and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust as of the day and year first written above.

BORROWER
Teton View Golf Estates, LLC

By

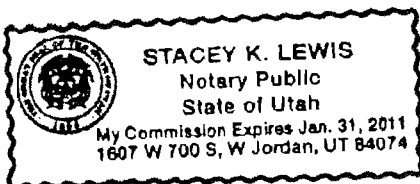
Name: Tony Versteeg

Title: Manager of Western Equity, LLC, which is a manager of Teton View

STATE OF Utah)
County of Salt Lake ss.

On this 15th day of August, 2008, before me Stacey Lewis, personally appeared Tony Versteeg, as Manager of Western Equity, LLC a manager of Teton View Golf Estates, LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Stacey Lewis
NOTARY PUBLIC FOR IDAHO Utah
Residing at West Jordan
My Commission Expires Jan 31 2011

Instrument # 1310120

IDAHO FALLS, BONNEVILLE, IDAHO
 2008-08-27 04:27:00 PM No. of Pages: 1
 Recorded for: FIRST AMERICAN TITLE - ID
 RONALD LONGMORE Fee: 3.00
 Ex-Officio Recorder Deputy RAVERY
 Index To: AGREEMENT SUBORDINATION
 Electronically Recorded by Simplifile

Order No.: 266311-IF

SUBORDINATION OF MECHANIC'S AND MATERIALMAN'S LIEN RIGHTS

FOR VALUE RECEIVED, and to Induce First American Title Insurance Company to insure the following Deed of Trust as a first lien on the property described in said Deed of Trust, and in further consideration of the benefits accruing to us from such insurance, DEPATCO, INC. (the undersigned) do severally waive priority over the Deed of Trust securing a Note in the principal amount of \$250,000.00, from TETON VIEW GOLF ESTATES, LLC, as Grantors to The Sandra A. MacArthur Family Trust, Sandra A. MacArthur, Trustee, as Beneficiary their successors and/or assigns, recorded as Instrument No. 1309846, Mortgage records of Bonneville County, Idaho of any and all manner of liens, claims or demands, the undersigned severally have or hereafter might have, recorded or otherwise, against the below described property and improvements on account of labor performed and/or materials furnished in the construction of improvements upon said property and hereby severally and personally agree that the said Deed of Trust shall be deemed and considered a lien prior to any such liens or rights to liens of the undersigned.

Property Address: Bare Ground, See Legal Description Below

BEGINNING AT A POINT THAT IS S00°27'09"E 66.06 FEET ALONG THE EAST SECTION LINE AND N90°00'00"W 50.00 FEET FROM THE NORTHEAST SECTION CORNER OF SECTION 31, TOWNSHIP 3 NORTH, RANGE 38 EAST OF THE BOISE MERIDIAN, BONNEVILLE COUNTY, IDAHO; RUNNING THENCE S00°27'09"E 489.76 FEET; THENCE S89°03'37"W 371.44 FEET; THENCE N00°00'00"E 509.78 FEET; THENCE N89°00'00"E 347.27 FEET; THENCE S45°26'14"E 28.50 FEET TO THE POINT OF BEGINNING

Dated: 8/25/08

DEPATCO, INC.

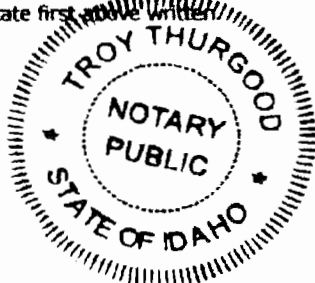

 GREG STODDARD, President
STATE OF Idaho)

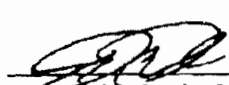
ss.

COUNTY OF Blaine)

On this 25th day of August, 2008, before me, a Notary Public in and for said State, personally appeared GREG STODDARD, known or identified to me to be the PRSIDENT of the corporation that executed the instrument or the person who executed the Instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.




 Notary Public for the State of IDAHO
 Residing at: REXBURG IDAHO
 My Commission Expires: 4/2/2013

MATERIALMAN'S LIEN

Instrument # 1314766

IDAHO FALLS, BONNEVILLE, IDAHO
10-20-2008 02:27:19 No. of Pages: 3
Recorded for: FULLER & CARR
RONALD LONGMORE
Ex-Officio Recorder Deputy *SA* Fee: 8.00
Index to: LIEN, LABOR

DEPATCO, INC., an Idaho)
corporation,)
)
Claimant,)
)
)
v.)
)
TETON VIEW GOLF ESTATES, LLC.,)
)
Owner of Record.)

CLAIM OF LIEN

NOTICE IS HEREBY GIVEN that DePatco, Inc., P.O. Box 246, St. Anthony, Idaho 83445, furnished certain materials and labor in conjunction with the improvement of certain real property belonging to Teton View Golf Estates, LLC., located in the City of Idaho Falls, Bonneville County, State of Idaho, more particularly described as follows:

Teton View Estates, Division No. 1, Idaho Falls, Bonneville County, State of Idaho, pursuant to the plat recorded August 28, 2008, as Instrument No. 1310084.

That said labor and materials were provided at the instance and request of Teton View Golf Estates, LLC., owner of record, and that such materials have become a part of the improvements located on the above-described property.

That DePatco, Inc., commenced to provide such labor and material on June 25, 2008, and up to July 25, 2008, which labor and materials were provided as aforesaid at the specific instance and request of Teton View Golf Estates, LLC., owner of record.

That said labor and materials furnished and unpaid have a total value of Seven Hundred Eighty Four Thousand Nine Hundred Forty Nine and No/100 Dollars (\$784,949.00), plus interest at the rate of 18% per annum from July 25, 2008, in the amount of Thirty

MATERIALMAN'S LIEN -1

Three Thousand Two Hundred Eighty Seven and 02/100 Dollars (\$33,287.02) and attorney fees in the amount of Two Hundred and No/100 Dollars (\$200.00) and that after giving all due credits and offsets, the total amount now due and owing to DePatco, Inc., is the sum of Eight Hundred Eighteen Thousand Four Hundred Thirty Six and 02/100 Dollars (\$818,436.02), together with accruing interest, there being no other just credits or offsets.

Wherefore, DePatco, Inc., hereby claims a Lien pursuant to Idaho Code Section 45-501 et. seq. upon the premises hereinabove described for the sum of Eight Hundred Eighteen Thousand Four Hundred Thirty Six and 02/100 Dollars (\$818,436.02), together with accruing interest thereon at the rate of 18% per annum from July 25, 2008, and also together with attorney fees in the event formal lien foreclosure is required as provided by law; and further for all recording costs incurred herein.

DATED this 20th day of October, 2008.

DEPATCO, INC.


By: Mark R. Fuller
Mark R. Fuller
Its: Attorney

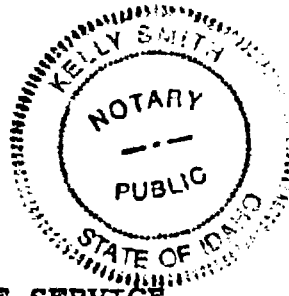
STATE OF IDAHO)
 : ss.
County of Bonneville)

On this 20th day of October, 2008, before me, the undersigned, a notary public in and for said state, personally appeared Mark R. Fuller, known to me to be the person whose name is subscribed to the within instrument, and being first duly

sworn, under oath, verifying that he has reviewed the above Claim of Lien and believes the same to be just and true.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.


Notary public for Idaho
Residing at: Rigby
My commission expires: 06-28-2011



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the following described pleading or document on the persons listed below on this ____ day of October, 2008, by Return Receipt Mail.

Document Served: MATERIALMAN'S LIEN

Persons Served:

Teton View Golf Estates, LLC.
Attn: Tony Versteeg
11105 S. Londonderry Drive
Draper, UT 84092
RETURN RECEIPT REQUESTED

Mark R. Fuller
Attorney for Claimant

Prepared by, recording requested by
and return to:

Name: David R. Schiess
Company: Schiess & Associates
Address: 7103 S 45th West
City: Idaho Falls
State: ID Zip: 83402
Phone: (208)522-1244
Fax: (208) 522-9232

Instrument # 1316496

IDAHO FALLS, BONNEVILLE, IDAHO
10-29-2008 12:39:14 No. of Pages: 2
Recorded for: SCHIESS & ASSOCIATES
RONALD LONGMORE Fee: 8.00
Ex-Officio Recorder Deputy
Index to: LIEN, LABOR

Above this Line for Official Use Only

Claim of Lien – Corporation
(Idaho Code § 45-507)

STATE OF IDAHO

COUNTY OF BONNEVILLE

COMES NOW, Kurt Roland as a representative of Schiess & Associates, an Idaho corporation [Lienor], and files this statement in writing, verified by the oath of Schiess & Associates [Person Claiming Lien], who has personal knowledge of the facts herein set forth:

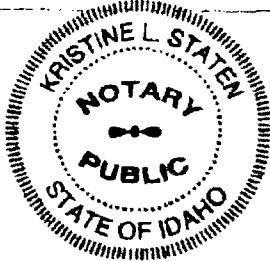
1. The undersigned hereby claims a lien upon the following property, situated in Bonneville County, Idaho, to wit:

Beginning at a point that is S00°27'09"E 25.00 feet from the Northeast Section Corner of Section 31, Township 3 North, Range 38 East of the Boise Meridian, Bonneville County, Idaho, running thence S00°27'09"E 913.64 along the East Section Line; thence S89° 32' 51"W 215.00 feet; thence S00°27'09"E 99.94 feet; thence N89°32'51"E 182.00 feet; thence S00°27'09"E 27.47 feet; thence S89°32'51"W 341.11 feet; thence N01°00'19"W 127.42 feet; thence S89°32'51"W 1413.98 feet; thence N36° 38' 38"W 116.19 feet; thence N15°14'53"W 260.01 feet; thence N01°00'18"E 255.52 feet; thence N02°41'50"E 280.33 feet; thence N02°25'59"E 15.16 feet; thence N89°00'18"E 1901.74 feet to the Point of Beginning, containing 40.015 acres.

2. Said lien is claimed to secure an indebtedness of \$92,880.71 [Amount Claimed] with interest, after deducting all credits and offsets, from the 20 day of June, 2007, for engineering, platting and survey construction staking and inspection.

3. The name of the owner's or proprietors of the said property are Jeff Burton and Tony Versteeg.
4. If applicable, the undersigned was employed by or furnished materials to Jeff Burton and Tony Versteeg.

This the 29 day of October, 2008.



[Signature]
Signature
Principal
Title
Schuess & Associates
Corporation

Before me, Kristine L. Staten, a Notary Public in and for the County of Bonneville, State of Idaho, personally appeared Kurt Roland, who being duly sworn, doth depose and say: That he has personal knowledge of the facts set forth in the foregoing statement of lien, and that the same are true and correct to the best of his knowledge and belief.

Kristine L. Staten
Affiant.

Subscribed and sworn to before me on this the 29 day of October, 2008, by said Affiant.

Kristine L. Staten
Notary Public

My Commission Expires: 08-01-2011

Certificate of Delivery

I, Joy Spear, hereby certify that I have delivered this day a true and correct copy of the foregoing to Jeff Burton by:

(x) Personal Service
(x) Mailing a true and correct copy of same by certified U.S. mail, postage prepaid, return receipt requested to Schuess & Associates, Idaho Falls, ID 83402

So certified this the 29th day of October, 2008.

Joy Spear
Signature

Instrument # 1316631

IDAHO FALLS, BONNEVILLE, IDAHO

10-30-2008 03:05:46 No. of Pages: 9

Recorded for: HD SUPPLY WATERWORKS LLC

RONALD LONGMORE

Fee: 27.00

Ex-Officio Recorder Deputy

Index to: LIEN LABOR

After Recording Return To:

Kevin T. Christiansen

Scott ♦ Hookland LLP

P.O. Box 23414

Tigard, OR 97281-3414

File No.: HD008

Lien Claimant: HD Supply Waterworks, LTD, doing business as HD Supply Waterworks formerly known as National Waterworks, Inc.

Lien Debtor: DePatco, Inc.

Owner(s) or Reputed Owner(s): Teton View Golf Estates, LLC and/or Teton View Estates and/or Tony Versteeg and/or Idaho Development, LLC and/or Teton View Estates Time Interval Association, Inc. and/or Teton View Estates LLC

Lien Amount: \$201,958.60*, plus interest accrued through September 26, 2008, in the amount of \$4,840.09, together with interest on the principal balance of \$201,932.60 at the rate of twelve percent (12%) per annum from September 26, 2008, until paid. Included in the principal balance of the lien claim (\$201,932.60) is Idaho State Tax in the amount of \$24,518.43.

NOTICE OF MECHANICS LIEN

1. Description Of The Property

KNOW ALL MEN BY THESE PRESENTS: The undersigned, hereinafter called the claimant, performed labor, transported or furnished materials to be used in or rented equipment or furnished services under a contract for work between claimant and DePatco, Inc., a construction agent or other person having charge of the construction of those buildings and/or other improvements commonly known as the Teton View Estates Project. Said buildings and/or improvements are situated upon certain land in the County of Bonneville, State of Idaho, which is the site of said improvement, described as follows:

See Exhibit "A" attached hereto and incorporated herein.

///

1 - NOTICE OF MECHANICS LIEN

2. Address, If Known

The property is located at or near the corner of Lewisville Highway and Tower Road (Highway 65) in Bonneville County. Claimant does not have a specific site address. See Exhibit "A" attached herein and incorporated herein for a description of the property.

3. Names Of Owners Or Reputed Owners

Teton View Golf Estates, LLC and/or Teton View Estates and/or Tony Versteeg and/or Idaho Development LLC and/or Teton View Estates Time Interval Association, Inc. and/or Teton View Estates LLC, all of whom at all times herein mentioned had knowledge of the construction of said improvement. All other owners or reputed owners are otherwise unknown.

4. Person By Whom Claimant Was Employed

The name of the person who employed claimant to furnish said labor, materials, services and/or equipment, and to perform said contract was DePatco, Inc.

5. Performance Of Work

Claimant commenced its performance on June 27, 2008 and completed its performance on August 4, 2008, and provided and furnished all labor, materials, services and equipment required by said contract and actually used in the construction of said building(s) and/or improvement(s), after which it ceased to provide labor or services, transport or furnish materials and/or rent equipment.

6. True Statement Of Demand Less Just Credits And Offsets

As set forth on Exhibit "B" attached hereto and incorporated herein, the following is a true statement of claimant's demand after deducting all just credits and offsets, to-wit:

The reasonable value and contract amount of claimant's labor, services, materials and equipment is:

Materials	\$201,932.60
Rental Equipment	\$
Services	\$
Recording fees	\$ 27.00
Total	\$
Less all just credits and offsets	\$ 0.00
Balance due claimant	\$201,958.50 *

2 - NOTICE OF MECHANICS LIEN

*Interest accrues at the legal rate of twelve percent (12%) per annum on the principal amount of \$201,932.60 from September 26, 2008, until paid, together with interest in the amount of \$4,840.09 accrued prior to September 26, 2008. Included in the principal balance of the lien claim (\$201,932.60) is Idaho State Tax in the amount of \$24,518.43.

8. Perfection Of Lien

Claimant claims a perfected lien for the amount last stated, \$201,958.60*, upon the said improvement and upon the land, to-wit: the land upon which said building(s) and/or improvement(s) is constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, to be determined by the court on rendering judgment foreclosing this lien.

9. Miscellaneous

- a) In construing this instrument, the masculine pronoun means and includes the feminine and the neuter and the singular includes the plural, as the circumstances may require.

///

///

///

///

///

///

///

///

3 - NOTICE OF MECHANICS LIEN

- b) The paragraph captions are of convenience only and shall not be deemed to limit the terms or provisions of this claim of lien.

STATE OF IDAHO)
) ss.
County of Bonneville)

I, Brandon Oswald, being first duly sworn on oath, say as follows: I am the District Manager of the claimant in the foregoing instrument; that I have knowledge of the facts therein set forth; that all statements made in said instrument are true, correct and just as I verily believe.

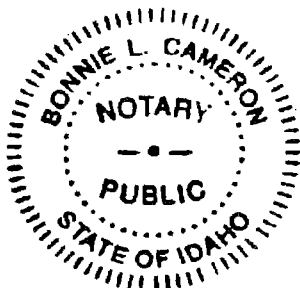
DATED this 30 of October, 2008.

HD SUPPLY WATERWORKS

By: *Brandon Oswald*
Brandon Oswald
As Its: District Manager

STATE OF IDAHO)
) ss.
County of Bonneville)

I, Bonnie L. Cameron a notary public, do hereby certify that on this 30 day of October, 2008, personally appeared before me Brandon Oswald, who, being by me first duly sworn, declared that he is the District Manager of HD Supply Waterworks that he signed the foregoing document as District Manager of the corporation, and that the statements therein contained are true.



Bonnie L. Cameron
Notary Public For State of Idaho
Residing in Idaho Falls, Idaho
My Commission Expires: 4/11/2011

4 - NOTICE OF MECHANICS LIEN

EXHIBIT "A"

Beginning at a point that is S00° 27'09"E 25.00 feet from the Northeast Section Corner of Section 31, Township 3 North, Range 38 East of the Boise Meridian, Bonneville County, Idaho, running thence S00° 27'09"E 913.64 along the East Section Line; thence S89° 32'51"W 215.00 feet; thence S00° 27'09"E 99.94 feet; thence N89° 32'51"E 182.00 feet; thence S00° 27'09"E 27.47 feet; thence S89° 32'51"W 341.11 feet; thence N01° 00'19"W 127.42 feet; thence S89° 32'51"W 1413.98 feet; thence N36° 38'38"W 116.19 feet; thence N15° 14'53"W 260.01 feet; thence N01° 00'18"E 255.52 feet; thence N02° 41'50"E 280.33 feet; thence N02° 25'59"E 15.16 feet; thence N89° 00'18"E 1901.74 feet to the Point of Beginning;
Containing 40.015 acres.

EXHIBIT "B" - PAGE 1 OF 4				
HD Water Supply Waterworks				
CUSTOMER: DePatco, Inc. HD008				
INVOICE #	INVOICE DATE	DATE SHIPPED	DESCRIPTION	AMOUNT
7482580	6/27/2008	6/27/2008	12X14' SDR35 PVC SWR PIPE	\$18,038.02
			8X14' SDR35 PVC SWR PIPE	\$3,669.12
			Tax	\$1,302.43
				\$23,009.57
7483619	7/3/2008	7/2/2008	8X14' SDR35 PVC SWR PIPE	\$8,790.60
			4X14' SDR35 PVC SWR PIPE	\$0.00
			8X4 PVC SDR35 SWR TEE GXG	\$1,682.45
			4 PVC SDR35 SWR 45 GXSP	\$408.56
			4 PVC SDR35 SWR GSKT CAP	\$291.06
			8 PVC SDR35 SWR GSKT CAP	\$20.03
			Tax	\$871.44
				\$11,862.14
7493381	7/3/2008	7/2/2008	18" 16GA CMP GALV CORR PIPE	\$358.40
			Tax	\$21.50
				\$379.90
7497165	7/3/2008	7/2/2008	4X14" SDR35 PVC SWR PIPE	\$2,703.68
			Tax	\$162.22
				\$2,865.90
7482991	7/11/2008	7/8/2008	16 TJ PR350 CL50 DI PIPE C/L	\$1,490.00
			8 TJ CL50 DI PIPE C/L	\$75,529.04
			6 TJ CL50 DI PIPE C/L	\$1,595.06
			Tax	\$4,716.85
				\$83,330.95
7483604	7/11/2008	7/10/2008	16X16 MJ Cross C/L CP DI C153	\$1,200.40
			16" MJ Regular Acc Set	\$2,218.44
			16 MJ CAP T/C	\$603.62
			16 MJ 45 Bend C/L	\$1,562.92
			16 DI MJ Lugged Restrainer Gland	\$878.96
			16 MJ Butterfly Vlv on Pratt	\$6,828.24
			26X36 #856 Valve Box Water Lid	\$448.28
			8 F6100 MJ RW GV OL on UACC	
			Clow Gate Valve	\$10,859.00
			8" MJ Regular ACC Set	\$1,668.16
			26X36 #856 Valve Box Water Lid	\$1,408.88
			8X8 MJ TEE C/L	\$527.44
			8X8 MJ Cross C/L	\$360.74
			16X8 MJ TEE C/L	\$1,901.16

EXHIBIT "B" - PAGE 2 OF 4

7483604	(continued)	7/10/2008	8 MJ 11-1/4 Bend	\$302.01
			8 MJ 22-1/2 Bend	\$172.88
			8 MJ 45 Bend C/L	\$171.10
			8 MJ 90 Bend C/L	\$98.78
			8 MJ Cap T/C	\$115.11
			8 MJ Plug T/C	\$38.37
			8X8 MJ Tee C/L	\$1,691.62
			6" MJ Regular Acc Set	\$738.64
			6 F6100 MJ RW GV OL ON UACC Clo	\$5,488.56
			26X38 #866 Valve Box Water Lid	\$784.00
			6" TR MJ MED HYD LA A Nut & 5 Pu	\$9,784.88
			8X21P D/S Sad Epoxy W/SS Straps OL	\$119.34
			7 2 Ballcorp MIPXPJ	\$263.26
			6'0" #77 Mainguard Post HDT Flp Inlet	\$756.08
			Tax	\$3,041.44
				\$53,732.11
7557230	7/14/2008	7/11/2008	Cadweld Flint Igniter	\$5.10
			Cadweld Mold for 10-12" Pipe	\$42.20
			25 Gram Cadweld Shot	\$738.00
			Cadweld #2 Sleeve	\$320.00
			18" #2 Bare Stranded Wire	\$542.50
			Tax	\$98.87
				\$1,748.67
7554140	7/15/2008	7/14/2008	16" MJ Regular Acc Set	\$0.00
			16 MJ Butterfly Vlv on Pratt	\$5,121.18
			6" TR MJ MED HYD LA A Nut & 5 Pu	\$4,892.34
			Tax	\$600.81
				\$10,614.33
7562486	7/15/2008	7/14/2008	Gal Paint, Black Magic Asphalt	\$29.80
			Tax	\$1.79
				\$31.59
7576099	7/16/2008	7/15/2008	25 Gram Cadweld Shot	\$49.20
			Tax	\$2.96
				\$52.15
7578958	7/17/2008	7/16/2008	25 Gram Cadweld Shot	\$492.00
			Tax	\$29.52
				\$521.52
7589190	7/22/2008	7/21/2008	Cadweld Flint Igniter	\$10.20
			Tax	\$0.61
				\$10.81

EXHIBIT "B" - PAGE 3 OF 4				
7587281	7/17/2008	7/14/2008	16 TJ PR350 CL50 DI PIPE C/L	\$29,800.00
			8 TJ CL50 DI PIPE C/L	\$0.00
			6 TJ CL50 DI PIPE C/L	\$0.00
			Tax	\$1,788.00
				\$31,588.00
7583673	7/21/2008	7/18/2008	Cadweld Mold for 10-12" Pipe	\$42.20
			Tax	\$2.53
				\$44.73
7601273	7/22/2008	7/21/2008	Gal Paint, Black Magic Asphalt	\$89.40
			4 PVC SDR35 SWR CAP HUB SW SO	\$87.92
			8X2 MJ TAPT CAP T/C CP DI C153	\$317.52
			Tax	\$29.69
				\$524.53
7606794	7/23/2008	7/22/2008	8X2 MJ TAPT CAP T/C CP DI C153	\$158.76
			Tax	\$9.53
				\$168.29
7607888	7/23/2008	7/22/2008	8X8 PVC SDR35 SWR WYW GXG	\$80.32
			8 PVC SDR35 SWR 45 GXSP	\$40.18
			8 PVC SDR35 SWR 90 GXSP	\$47.41
			Tax	\$10.08
				\$177.99
7616088	7/23/2008	7/22/2008	8X8 PVC SDR35 SWR WYE GXG	\$80.32
			Tax	\$4.82
				\$85.14
7621602	7/23/2008	7/22/2008	16 TJ PRE350 CL50 DI PIPE C/L	\$191,725.75
			Tax	\$11,503.55
				\$203,229.30
7611778	7/23/2008	7/22/2008	16X10 MJ TEE C/L CP DI C153	\$300.00
			16" MJ Regular Acc Set	\$135.88
			10" MJ Regular Acc Set	\$54.16
			8 F6100 MJ RW GV OL ON L/ACC Clo	\$821.51
			8" MJ Regular Acc Set	\$63.03
			26X36 #856 Valve Box Water Lid	\$64.04
			Tax	\$86.32
				\$1,524.94
7562317	7/25/2008	7/24/2008	16 MJ Butterfly Vlv on Pratt	\$6,828.24
			6" TR MJ MED HYD LA A Nut & 5 Pul	\$0.00
			16" MJ Regular Acc Set	\$0.00
			Tax	\$409.69
				\$7,237.93

EXHIBIT "B" - PAGE 4 OF 4				
7527814	8/5/2008	8/4/2008	18" 16GA CMP GALV CORR PIPE	\$358.40
			18" Hugger Band for CMP	\$38.10
			Tax	\$23.79
				\$420.29
PRINCIPAL				\$432,738.50
CREDIT MEMO				-230,805.90
TOTAL				\$201,932.60
			Interest Accrues at the legal rate of twelve percent (12%)	
			per annum on the principal amount of \$201,932.60 from	
			September 26, 2008, until paid, together with interest in	
			the amount of \$4,840.09 accrued prior to September 26, 2008	
			Included in the principal amount of the lien claim (\$201,932.60	
			is Idaho State Sales Tax in the amount of \$24,518.43	

Instrument # 1323460
IDAHO FALLS, BONNEVILLE, IDAHO
2009-02-11 04:05:00 PM No. of Pages: 1
Recorded for: FIRST AMERICAN TITLE - ID
RONALD LONGMORE Fee: 3.00
Ex-Officio Recorder Deputy SSolis
Index To: APPOINTMENT OF TRUSTEE
Electronically Recorded by Simplifile

APPOINTMENT OF TRUSTEE

KNOW ALL MEN BY THESE PRESENTS:

That Teton View Golf Estates, LLC, a Utah limited liability company, is/are the Grantor(s), and Sandra A. MacArthur Trustee of the Sandra A. MacArthur Family Trust, is the beneficiary on a Deed of Trust recorded August 25, 2008, in the records of Bonneville County, Idaho as Instrument No. 1309846.

The undersigned, who is the present Beneficiary under said Deed of Trust desires to appoint JUST LAW, INC., whose address is 381 Shoup Ave., Suite 211, P.O. Box 50271, Idaho Falls, Idaho, 83405. Said Trustee shall have all powers, effective forthwith.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 5 day of February, 2009.

Sandra A. MacArthur Trustee of the Sandra A. MacArthur Family Trust
By Sandra A Mac Arthur

STATE OF Utah)

) ss.

County of Utah)

On this 5 day of February, 2009, before me, the undersigned, a Notary Public in and for the State of Utah, personally appeared Sandra A Mac Arthur, known to me to be the Trustee of the Sandra A. MacArthur Family Trust who executed the instrument on behalf of said Trust and acknowledged to me that such Trust executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 5 day of February, 2009.

[Signature]
Notary Public for
Residing at Saratoga
Commission expires: 6-13-10

286281-DF
First American Title Co.
900 Pier View Dr., Suite 110
Idaho Falls, ID 83402

Instrument # 1323461
IDAHO FALLS, BONNEVILLE, IDAHO
2008-02-11 04:05:00 PM No. of Pages: 2
Recorded for: FIRST AMERICAN TITLE - ID
RONALD LONGMORE Fee: 6.00
Ex-Officio Recorder Deputy SSolis
Index To: NOTICE OF DEFAULT
Electronically Recorded by Simplifile

NOTICE OF DEFAULT

Under the Deed of or transfer in trust executed by Teton View Golf Estates, LLC, a Utah limited liability company as Grantor(s) with Sandra A. MacArthur Trustee of the Sandra A. MacArthur Family Trust as the Beneficiary, under the Deed of Trust recorded August 25, 2008 as Instrument No. 1309846, in the records of Bonneville County, Idaho.

More particularly described as follows:

Beginning at a point that is S00°27'09" E. 66.06 feet along the East Section line and N90°00'00" W. 50.00 feet from the Northeast section corner of Section 31, Township 3 North, Range 38 East of the Boise Meridian, Bonneville County, Idaho; running thence S00°27'09" E. 489.76 feet; thence S89°03'37" W. 371.44 feet; thence N00°00'00" E. 509.78 feet; thence N89°00'00" E. 347.27 feet; thence S45°26'14" E. 28.50 Feet to the Point of Beginning.

Now known as Lots 25 and 26, Block 6, TETON VIEW ESTATES, Division No. 1, an addition to the City of Idaho Falls, Bonneville County, Idaho, according to the plat recorded August 27, 2008 as Instrument No. 1310084.

Said Beneficiary hereby gives notice that a breach of the obligation for which such transfer in security has occurred, the nature of such breach being the failure to pay the amount due under the certain Promissory Note and Deed of Trust, in the amounts called for thereunder as follows:

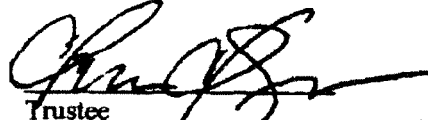
The entire sum owing on the obligation as of December 15, 2008 secured by said Deed of Trust is \$254,725.00 as principal, together with late fees, service charges, attorney's fees, costs of this foreclosure, any and all funds expended by Beneficiary to protect its security interest, and interest accruing pursuant to the terms of the promissory note, together with delinquent taxes until the date of sale.

286281-IF
First American Title Co.
900 Pier View Dr., Suite 110
Idaho Falls, ID 83402

The Beneficiary elects to sell or cause the trust property to be sold to satisfy said obligation.

Dated this 10th day of February, 2009.

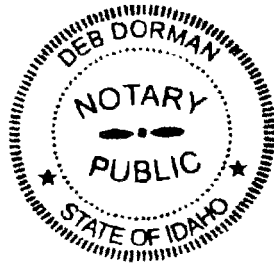
JUST LAW, INC.


Trustee
Attorney for Beneficiary

STATE OF IDAHO)
) ss.
County of Bonneville)

On this 10th day of February, 2009, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Charles C. Just, known to me to be the President of the corporation that executed this instrument or the person who executed the instrument on behalf of said corporation, whose name is subscribed to the within instrument and acknowledged to me that such corporation executed the same as such Trustee.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 10th day of February, 2009.



deb dorman
Notary Public for Idaho
Residing at Idaho Falls
Commission expires: 4.17.12

121179
FORM 2008 10-75 1000
ER13-1157

UTAH POWER & LIGHT COMPANY

EASEMENT

10.

J. E. WHITE and SARAH WHITE
his wife. Grantor & do hereby convey to UTAH POWER & LIGHT COMPANY, a corporation, its successors in interest and assigns, Grantee, for the sum of One (\$1.00) Dollar and other valuable consideration, a perpetual easement and right of way for the erection, operation and continued maintenance, repair, alteration, inspection, relocation and replacement of the electric transmission and distribution circuits of the Grantee, with the necessary poles, towers, guys, stubs, crossarms, braces and other attachments affixed thereto, for the support of said circuits, on, over and across a tract of land located in Bonneville County, Idaho, along the following described center line:

Beginning on the east boundary line of the Grantor's land at a point 940 feet south and 20 feet west, more or less, from the northeast corner of Section 31, T.3 N., R.38 E., B.M., thence westerly 95 feet, more or less, on said land and being in the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 31.

Together with all rights of ingress and egress necessary or convenient for the full and complete use, occupation and enjoyment of the easement hereby granted, and all rights and privileges incident thereto, including the right to cut and remove timber, trees, brush, overhanging branches and other obstructions which may injure or interfere with the Grantee's use, occupation or enjoyment of this easement.

WITNESS the hands of the Grantors, this 19th day of December, A. D. 1979.

J. E. White
Sarah White

STATE OF IDAHO.

County of Bonneville ss.

On this 19th day of December, in the year 1979, before me, George K. Madsen, a Notary Public in and for the State of Idaho, personally appeared J. E. White and Sarah White, his wife, known to me to be the persons whose names are subscribed to the within instrument as I acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the date in this Certificate first above written.

My commission expires:

George K. Madsen
Notary Public.

2-30-80.

Residing at Rigby, Idaho

Description Approved

Ree

Form & Execution Approved

Ree

3848
7518

File No. 50517

For Recording Data

253 *Marsh*



IDWD
Order No. 10-44357 A

Instrument # 1292698
IDAHO FALLS, BONNEVILLE, IDAHO
2008-03-10 12:51:00 PM No. of Pages 2
Recorded for: AMERITITLE - IDAHO FALLS
RONALD LONGMORE Fee: 6.00
Ex-Officio Recorder Deputy SSolis
Index To: DEED WARRANTY
Electronically Recorded by Simplifile

WARRANTY DEED

For Value Received,

ZBS, LLC, an Idaho Limited Liability Company

GRANTOR(s), do(es) hereby GRANT, BARGAIN, SELL and CONVEY unto
Utah
Teton View Golf Estates, LLC, an Idaho Limited Liability Company

GRANTEE(s), whose address is: 6371 N 5th E, Idaho Falls, ID 83401

Mailing: 1105 Londan Derry, Sandy, UT 84092
the following described real property, to-wit:

Beginning at a point that is S 0°27'09" E 25.00 feet along the section line from the Northeast corner of Section 31, Township 3 North, Range 38, East of the Boise Meridian, Bonneville County, Idaho, and running thence S 0°27'09" E 913.64 feet along the Section line; thence S 89°32'51" W 1641.08 feet; thence S 39°14'56" E 502.03 feet to the 1/16th line of Section 31; thence S 89°00'06" W 104.71 feet to the centerline of the Idaho Canal; thence along the centerline of the Idaho Canal the following four courses: (1) N 36°27'12" W 633.43 feet; (2) N 15°03'08" W 239.69 feet; (3) N 1°10'58" E 246.69 feet; (4) N 2°53'42" E 297.79 feet to a point on the South Right-of-Way line of Tower Road; thence N. 89°00'00" E 1839.63 feet along said road Right-of-Way to the point of beginning.

ALSO:

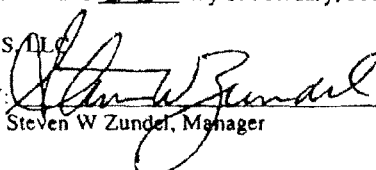
Beginning at a point that is S 00°16'08" E along the section line 1066.05 feet from the Northeast corner of Section 31, Township 3 North, Range 38 East of the Boise Meridian, Bonneville County, Idaho; running thence S 89°43'52" W 374.11 feet; thence N 00°49'18" W 127.48 feet; thence N 89°43'52" E 160.34 feet; thence S 00°16'08" E 100.00 feet; thence N 89°43'52" E 182.00 feet; thence N 00°16'08" W 100.00 feet; thence N 89°43'52" E 33.00 feet to the East line of said Section 31; thence S 00°16'08" E along the East line 127.47 feet to the point of beginning.

TO HAVE AND TO HOLD the premises with its appurtenances unto the said Grantees, their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantees, that they are the owners in fee simple of said premises that said premises are free from all encumbrances except the current year's taxes and assessments, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record and that they will warrant and defend the same from all lawful claims whatsoever.

DATED this 20 day of February, 2008.

ZBS, LLC

BY:

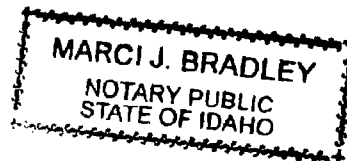

Steven W Zundel, Manager

STATE OF IDAHO)
)ss
COUNTY OF Bonneville)

On this 20 day of February, 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared Steven W Zundel as the Manager of ZBS LLC a Limited Liability Company, known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this instrument first above written.

Notary Public
Residing at: Pingree
Commission Expires: 11/1/12



MANATRON

PIN: **RP03N38E310047** TAG: **TAG 013-0000** Current owner: **TETON VIEW GOLF ESTATES LLC**
 AIN: TIF: Ownership type: **Sole Ownership**
 Status: **Inactive** Case: Situs address: **0 N 5TH E**
 Geocode: Plan: Description: **36.183 A N1/2 NE1/4, SEC 31, T**
 Rev acct: **0000113575** Roll type: **Real Property** Class: **101- Irrigated Crop Land**

Year/Bill	2008-133302	*Mass Default*	Print Print Stmt Bill Detail	Total Due	04/07/2009
Bill type:	Original	Owner of record:		Inst 2-June 20	\$18.33
Bill dates:	November 01, 2008	TETON VIEW GOLF ESTATES LLC		Total Current	\$18.33
Amount:		11105 LONDON DERRY		Delinquent	\$19.26
Paid date:		SANDY UT 84092		Adv/Surplus	\$0.00
Receipt:		Communication:		Total Due	\$37.59
Sequence no:	0			Values/Exemptions	
Paid by:				Value Date	1/1/2008
Decal no:				Total Acres	36.1830
Lender:				Land Market	3,881
Loan no:				Imp Market	00
Service company:				Total Value	3,881
Description:	36.183 A N1/2 NE1/4, SEC 31, T 3N, R 38			Total Exemptions	0
				Net Tax Value	3,881

Assessment Summary					Detail
Gross Tax	Credits	Net Tax	Tax Savings	Total Credits/Savings	
36.66	0.00	36.66	0.00	0.00	

Manatron GRM - PropertyDetailTask - ROTaxInfoView

Page 1 of 1

MANATRON

PIN: **RP03N38E310191** TAG: **TAG 013-0000** Current owner: **TETON VIEW GOLF ESTATES LLC**
 AIN: **R-2** TIF: Ownership type: **Sole Ownership**
 Status: **Inactive** Case: Situs address: **D N 5TH E**
 Geocode: Plan: Description: **2.617 A NE1/4 NE1/4, SEC 31, T**
 Rev acct: **0000113576** Roll type: **Real Property** Class: **512- Rural residential tracts**

Year/Bill	2008-133135	*Mass Default*	Print	Print Stmt	Bill Detail	Total Due	04/07/2009	
Bill type:	Original	Owner of record:					Inst 2-June 20	\$1,210.09
Bill dates:	November 01, 2008	TETON VIEW GOLF ESTATES LLC					Total Current	\$1,210.09
Amount:		11105 LONDON DERRY					Delinquent	\$1,272.90
Paid date:		SANDY UT 84092					Adv/Surplus	\$0.00
Receipt:		Communication:					Total Due	\$2,482.99
Sequence no:	0						Values/Exemptions	
Paid by:							Value Date	1/1/2008
Decal no:							Total Acres	2.6170
Lender:							Land Market	42,818
Loan no:							Imp Market	204,290
Service company:							Total Value	247,108
							Total Exemptions	0
							Net Tax Value	247,108
Description:	2.617 A NE1/4 NE1/4, SEC 31, T 3N, R 38							

Assessment Summary					Detail
Gross Tax	Credits	Net Tax	Tax Savings	Total Credits/Savings	
2420.18	0.00	2420.18	0.00		0.00

THE FOLLOWING TELECOPY IS FROM:

**LAW OFFICES OF
FULLER & CARR
410 MEMORIAL DRIVE, SUITE 201
P.O. BOX 50935
IDAHO FALLS, IDAHO 83405
TELEPHONE (208) 524-5400
FACSIMILE (208) 524-7167**

THIS TELECOPY IS BEING SENT TO:

Name: Michael GaffneyFacsimile Number: 529-9732Date: 4/13/09 Time Sent: 4:30 p.m.Number of pages, including transmittal sheet: 18

****IF YOU DO NOT RECEIVE ALL PAGES OR YOU HAVE
PROBLEMS RECEIVING THIS MESSAGE, PLEASE CALL
FULLER & CARR LAW OFFICE****

Regarding: Printcraft v. Sunnyside Park Utilities

Our File No.: _____

Objection to Plaintiff's Claim for Attorney Fees and Costs

CONFIDENTIALITY NOTE:

The information contained on this page and the pages transmitted herewith (this "telecopy") is privileged and confidential information intended only for the use of the individual or entity named above. If the reader or recipient of this telecopy is not the intended recipient, you are hereby notified that any consideration, dissemination or duplication of all or any part of the telecopy is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone and return the original telecopy to us at the above address.

MARK R. FULLER (ISB No. 2698)
 DANIEL R. BECK (ISB No. 7237)
 FULLER & CARR
 410 MEMORIAL DRIVE, SUITE 201
 P.O. Box 50935
 IDAHO FALLS, ID 83405-0935
 TELEPHONE: (208) 524-5400

ATTORNEY FOR DEFENDANT SUNNYSIDE PARK UTILITIES, INC.

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL
 DISTRICT OF THE STATE OF IDAHO IN AND FOR
 THE COUNTY OF BONNEVILLE**

PRINCRAFT PRESS, INC., an)	Case No. CV-06-7097
Idaho corporation,)	
)	
Plaintiff,)	OBJECTION TO PLAINTIFF'S
v.)	CLAIM FOR ATTORNEY FEES
)	AND COSTS
SUNNYSIDE PARK UTILITIES,)	
INC., an Idaho corporation,)	
SUNNYSIDE PARK OWNERS)	
ASSOCIATION, INC., an Idaho)	
corporation, SUNNYSIDE)	
INDUSTRIAL AND PROFESSIONAL)	
PARK, LLC, an Idaho limited)	
liability corporation, DOYLE)	
BECK, an individual, and KIRK)	
WOOLF, an individual.)	
)	
Defendants.)	
)	
SUNNYSIDE PARK UTILITIES,)	
INC., an Idaho corporation,)	
and SUNNYSIDE INDUSTRIAL AND)	
PROFESSIONAL PARK, LLC, an)	
Idaho limited liability)	
corporation.)	
)	
Counterclaimants,)	
v.)	
)	
PRINCRAFT PRESS, INC., an)	
Idaho corporation, and TRAVIS)	
WATERS, an individual.)	
)	
Counter-defendants.)	

COMES NOW the Defendant, Sunnyside Park Utilities, Inc., an Idaho corporation, (hereafter "Sunnyside") and files this Objection to Plaintiff's Memorandum of Attorney Fees and Costs pursuant to IRCP 54(d)(6) and 54(e)(6) within fourteen (14) days of service of the Memorandum seeking fees and costs on March 30, 2009. Sunnyside adopts and relies upon all objections to Plaintiff's attorney fees set forth by Defendants Beck and Woolf in their separate objection, as if incorporated herein.

ARGUMENT

I. PREVAILING PARTY (ISSUE RESERVED)

Sunnyside concedes that Printcraft is the prevailing party in this litigation based on the Judgment on Verdict of \$990,000. However, if the Court grants relief under either the Motion for JNOV or the Motion for New Trial, Sunnyside reserves the right to dispute Printcraft's status as the prevailing party.

II. ATTORNEY FEES SHOULD BE DISALLOWED ENTIRELY

Printcraft asserts that it is entitled to attorney fees under "two commercial transactions: (1) [for Printcraft] to occupy a commercial building in the Sunnyside Industrial Park under a ten year lease and (2) to pay for utility services that ultimately were prohibited as a result of the defendant's malfeasance." Memorandum of Law RE: Award of Attorney's Fees, pg. 6. For the reasons set forth hereafter, Printcraft is not entitled to attorney fees under either of these alleged commercial transactions.

a. Sunnyside was not a party to any commercial transaction regarding the lease

Printcraft is not entitled to attorney fees under §12-120(3) based upon a commercial transaction for Printcraft to occupy a commercial building under a ten year lease. Sunnyside was not a party to any lease for Printcraft to occupy a commercial building in the subdivision. This lease transaction, between CTR Management and Printcraft, does not provide Printcraft with a claim for attorney fees under Idaho Code §120(3). Idaho's Supreme Court has recently denied a claim for attorney fees pursuant to I.C. §12-120(3) where the party claiming fees was not an actual party to the transaction and was instead a beneficiary attempting to enforce the agreement. *Taylor v. Maile*, Docket No. 33781, pg. 10 (Idaho 1-30-2009) ("The district court properly denied the Taylors' Motion for Attorney Fees. The Court determined that the Taylors could not receive attorney fees pursuant to I.C. §12-120(3) because the Earnest Money Agreement was between the Trust and the Mailes and, therefore, the Taylors were not a party to the transaction...We affirm the district court.") A copy of *Taylor v. Maile* is attached for the convenience of the Court. Where there is a commercial transaction, but it is not between the parties to the litigation, the commercial transaction cannot constitute the basis upon which the party is entitled to attorney fees.

Even in the recent case of *Blimka*, which broadened the scope of attorney fees under Idaho Code §12-120(3), the Supreme Court still held that attorney fees under §12-120(3) are only proper if "the commercial transaction is integral to the claim, and

constitutes the basis upon which the party is attempting to recover." *Blimka v. My Web Wholesaler, LLC*, 143 Idaho 723, 728, 152 P.3d 594, 599 (2007) (Emphasis Added). In *Beco Const. v. J-U-B Engineers*, the Court held the following: "The case at bar clearly involved a 'commercial transaction' within the meaning of I.C. §12-120(3), but the transaction was between the City and BECO and not between J-U-B and BECO." 145 Idaho 719, 726, 145 Idaho 719 (2008). The Court then held that such a commercial transaction was not sufficient to provide a basis for a fee award under §12-120(3). *Id.*

Sunnyside further relies upon the holding of *Sowards v. Rathbun*, 134 Idaho 702, 8 P.3d 1245 (2000) as explained by this Court in its Order on SPOA's Motion for Attorney Fees, entered April 2, 2009 ("As in *Sowards*, the gravamen of this action was the tort claim for fraud by nondisclosure. As in *Sowards*, §12-120(3) cannot be the basis for an award of attorney fees.") *Id.*, pg. 3.

Even though this case was remotely connected to a lease between Printcraft and CTR Management, that transaction was not between Sunnyside and Printcraft and cannot be the basis of a attorney fee award under §12-120(3). The gravamen of this litigation was the tort claim for fraud by nondisclosure, not enforcement of the lease to which Sunnyside was not a party.

b. Printcraft is not entitled to Attorney Fees for an alleged commercial transaction for sewer services where Printcraft violated the law.

Printcraft is not entitled to recover under §12-120(3) based upon any alleged commercial transaction where Printcraft's own

illegal conduct breached the contract. In *Farrell v. Whiteman*, the Idaho Supreme Court held as follows:

Whiteman argues that the district court erred by awarding attorney fees to Farrell under Idaho Code §12-120(3) because the underlying implied-in-fact contract was illegal. In the case of an illegal contract, neither party may claim the benefit of Idaho Code 12-120(3)...Even when a party is permitted some recovery on an illegal transaction, the court may not award attorney fees under Idaho Code §12-120(3).

Farrell v. Whiteman, Docket No. 34383 (Idaho 1-22-09). A copy of *Farrell v. Whiteman* is attached for the convenience of the Court. In *Farrell*, the Court specifically referenced *Trees v. Kersey*, which stated that "[t]he commercial transaction must be 'integral to the claim' and constitute 'the basis upon which the party is attempting to recover.'" 138 Idaho 3, 12, 56 P.3d 765 (2002)¹. In *Trees* the Court explained that the commercial transaction was not "the basis upon which the party was attempting to recover." *Id.* The *Trees* Court explained: "...the award of the district court was based upon the exception to the illegality doctrine for fraud which sounds in tort." *Id.* It is fundamental, "that rights based on violation of law will **never be enforced** by the courts and that when a transaction is shown to be illegal because of contravention of a statute, a court is justified in its refusal to uphold the transaction in any way." *Trees*, 138 Idaho at 12, 56 P.3d 765 (2002) (citing *Nash v. Meyer*, 54 Idaho 283, 31 P.2d 273 (1934)) (emphasis added). The reasoning behind this rule is as follows:

No court will lend its aid to a man who founds his cause of action upon an immoral or illegal act. If from the

¹ While *Trees v. Kersey*, predates *Blimka v. My Web Wholesaler, LLC*, the Court's reliance upon *Trees* in *Farrell v. Whiteman* in 2009 clearly indicates that the holding in *Trees* has not been overruled and is still Idaho law.

plaintiffs' own stating, or otherwise, the cause of action appears to arise *ex turpa causa*, or the transgression of a positive law of this country, there the court says he has no right to be assisted. It is upon that ground that the court goes not for the sake of the defendant, but because they will not lend their aid to such a plaintiff.

Nash v. Meyer, 54 Idaho 283, 300 (1934).

In this case it is undisputed and established as a matter of law that Printcraft breached any express or implied in fact contract between the parties by illegally discharging substances in violation of law. See Memorandum Decision and Order, entered August 31, 2007. As a result, Printcraft has no right to assistance, under any claim based in contract. Because of Printcraft's illegal conduct, Printcraft could not obtain any relief based upon either alleged commercial transaction. This Court has previously held that Printcraft's claims for "damages cannot be based upon Sunnyside's termination of the septic service since the Court has previously determined that such action was not wrongful." See Memorandum Decision and Order entered January 15, 2009, pg. 3-4. This "implied in fact contract whereby Sunnyside would provide services to Printcraft by receiving waste" (See Memorandum Decision and Order entered April 23, 2008, pg. 7) is the exact transaction "to pay for utility services" upon which Printcraft seeks to recover attorney fees. Printcraft forfeited all rights to recover in contract by its illegal conduct. Printcraft cannot recover attorney fees under §12-120(3) as a reward for its own illegal conduct. Printcraft's only possibility for recovery is under an exception to the illegality doctrine, which is clearly based in tort not in contract.

Printcraft's recovery could only be based upon some exception to the illegality doctrine which allowed Printcraft to avoid the consequences of its own illegal conduct. Such a claim clearly sounds in tort. The present case is easily distinguishable from *Blimka*, where the prevailing party did not need to base its claim in tort to avoid the consequences of its own illegal conduct and could instead base its fraud claim directly on the commercial transaction.

Printcraft is not entitled to an award of fees under §12-120(3) because Sunnyside was not a party to the commercial lease between Printcraft and CTR Management. Printcraft's own illegal conduct in discharging sewage in violation of state law prevents it from basing its attorney fee claim upon any implied in fact contract. The Court should not award Printcraft any fees pursuant to Idaho Code §12-120(3) because Printcraft's claims were based in tort not on a commercial transaction.

III. ATTORNEY FEES SHOULD NOT BE AWARDED FOR DISTINCT CLAIMS WHERE PRINTCRAFT WAS NOT PREVAILING PARTY AND BASED ON CLAIMS WHICH ARE IN NO WAY RELATED TO ANY COMMERCIAL TRANSACTION

In the event the Court does determine to award fees to Printcraft, such an award should be apportioned between distinct claims based upon the mixed relief recovered by the parties. Idaho's Court of Appeals has recently recognized that in circumstances where there are truly multiple claims for differing relief, it is appropriate, in the Court's discretion, for the Court to split the claims when making a determination of the award of attorney fees. *Nguyen v. Bui*, 146 Idaho 187, 191 P.3d 1107

(Ida.App. 2008). The Supreme Court has also ruled: "When there are multiple claims, counterclaims, etc., each claim may be examined individually in addition to looking at the overall result. If it becomes apparent a party has prevailed on a particular claim or claims, the court may, in its discretion, apportion an award in a fair and equitable manner." *Bream v. Benscoter*, 139 Idaho 364, 369, 79 P.3d 723 (2003). In this case because of the multiple claims seeking differing relief, the Court should apportion any award of attorney fees.

a. Printcraft's Claim for Water Disconnection

Printcraft's claim for Breach of Contract for water disconnection was an independent and distinct claim from the claims related to fraud by non-disclosure. This was not an alternative theory pled by Printcraft in an attempt to recover the same type of relief as Printcraft's other claims. The water disconnection claim was the subject of a Motion for Summary Judgment wherein the Court determined that Printcraft was only entitled to recover nominal damages. See Memorandum Decision and Order entered October 1, 2008. Printcraft subsequently dropped its claim for water disconnection and did not try this claim to the jury despite the attorney fees that had been incurred by Printcraft in pursuing this claim and defending against Sunnyside's successful Motion for Summary Judgment. It is not equitable for Printcraft to recover attorney fees based upon the water disconnection claim, which was completely independent of the other claims asserted by Printcraft, where Printcraft in no way prevailed upon this claim. If the Court does award attorney fees

to Printcraft it should reduce that amount by all attorney fees Printcraft incurred related to the independent water disconnection claim. If such fees cannot be separately identified and segregated, the Court should apportion fees in a fair and equitable manner.

b. Sunnyside's claims for Nuisance and Trespass

Even though Printcraft avoided liability on Sunnyside's claims for Nuisance and Trespass, Printcraft should not be awarded any attorney fees expended in defending these claims under §12-120(3), because they were not based on any commercial transaction between the parties. There is no statute cited by Printcraft, which allows Printcraft to recover fees for either nuisance or trespass, even as prevailing party.

c. Attorney Fees to Pursue SPOA and SIPP

The gravamen of Printcraft's Complaint against SPOA was tort based on non-disclosure. See Order on SPOA's Motion for Attorney Fees, entered April 2, 2009. Therefore, Printcraft is not entitled to any attorney fees from Sunnyside Park Utilities related to Printcraft's claims against SPOA. The gravamen of Printcraft's Complaint against SIPP was also tort based on non-disclosure. Therefore, Printcraft is not entitled to any attorney fees from Sunnyside Park Utilities related to SIPP. Printcraft has failed to distinguish any attorney fees that are related to its unsuccessful claims against SIPP and SPOA, therefore, Printcraft's Memorandum of Costs is insufficient to support any award of fees against Sunnyside Park Utilities.

d. Attorney Fees Prior to Amendment to Add Fraud

Claims

Printcraft should not be entitled to recover any fees prior to July 18, 2007, the date when Printcraft filed its Amended Complaint to add the causes of action for Fraudulent Non-Disclosure. Printcraft's initial causes of action for Interference with Business Relationship, Interference with Contractual Relations, Injunction, Negligence and Breach of Contract were all dismissed on Sunnyside's first and second Motions for Summary Judgment. Sunnyside prevailed on all of these claims and should not be assessed with attorney fees relating to any of these causes of action.

e. Attorney Fees Related to SPU Contract Claims

Printcraft should not be entitled to recover any fees related to SPU's Breach of Contract claim. The Court found, as a matter of law, that Printcraft violated applicable state law and thereby breached the contract. Where the Court found as a matter of law that Printcraft's conduct was illegal, Printcraft cannot be rewarded by recovering attorney fees. The Court should at the very least, separate out attorney fees related to SPU's successful contract claim upon which SPU prevailed and was awarded damages by the Court.

IV. THE ATTORNEY FEES CLAIMED ARE UNREASONABLE AND SHOULD BE REDUCED

The attorney fees sought by Printcraft are unreasonable and excessive in multiple ways. Even if Printcraft is the prevailing party in a commercial transaction, which Sunnyside does not concede, Printcraft is only entitled to **reasonable** attorney fees.

All fees which are unreasonable either as to quantity of hours or rate charged should be denied.

a. Legal work unrelated to this case

Printcraft's requested attorney fees include multiple entries for attorney fees which are clearly not related in any way to this case, and concern criminal defense and title issues. Illustrative examples include the following:

1. 6/15/07-"Telephone conference with Steve Herzog RE: Continue Pretrial Conference"
2. 6/28/07-"Research and analysis RE: Discovery Rule on Tolling Time Period for Serving Notice of Tort Claim on Municipality"
3. 7/9/07-"Attend Pretrial Conference on Citation"
4. 7/11/07-"Letter to Travis Waters RE: Pretrial Conference and Prosecutor's Offer of Resolution"
5. 7/16/07-"Receive and Review Photographs from Travis Waters RE: Citation on Improper Lane Change"
6. 7/30/07-"Pre-trial Conference and Deal on Unsafe Left Hand Turn Change."
7. 8/6/07-"Pay fines on plea agreement defective equipment and seat belt violation."
8. 6/25/08-"Communication with Title Company. Prepare/Proof/Edit and Finalize Deeds of Trust."
9. 8/14/08-"Deeds of trust revision work"
10. 8/26/08-"Communicate with First American Title; coordinate title insurance"

In addition to the illustrative examples listed above, there are multiple other entries which are clearly not related to this case.

Furthermore there are multiple entries which could be related either to one of these other cases or could be related to Sunnyside, but because of the lack of detail in the entry it is impossible to determine. Printcraft should not be entitled to recover any of these unsubstantiated fees from Sunnyside.

b. Secretary Time

While fees may be awarded, in the Court's discretion, for paralegal work, Printcraft has included in its billings multiple entries for obvious secretarial work. The correct approach, if the Court awards any paralegal fees, was set forth in *Ventures v. Loucks*, wherein the Court stated:

In this case, the trial judge applied Rule 54(e)(1)'s restriction that fees may only be awarded for costs associated with attorney and paralegal work, distinguishing such costs from those incurred for clerical work. The trial judge evaluated POV's initial submission of costs under the Rule and struck those items that were not properly paralegal work.

144 Idaho 233, 239, 159 P.3d 870 (2007).

Printcraft's claim for clerical work from its various legal assistants totals many thousands of dollars. Illustrative examples of such clerical work, include, but are not limited to:

1. 10/8/07-SBJD-"Edited letter to Mark Fuller"
2. 10/10/07-JWM-"Edited letter to Fuller"
3. 10/24/07-JWM-"Edit/format discovery pleadings"
4. 10/26/07-SBJD-"Copy time. Edited the discovery responses. Drafted Notice of Service. Letter to Court"
5. 11/8/07-SBJD-"Prepared documents for expert. Copy Time."

Secretarial fees and copy time masquerading as paralegal fees billed at \$85.00 per hour should be denied in total.

c. Fees Related to Inspection of Printcraft's Property

After requiring the parties to "meet and confer" on October 29, 2007, an inspection of the Printcraft building occurred, however, Printcraft refused to allow access to all of the building. See Affidavit of Mark R. Fuller, dated March 14, 2008, submitted in support of Sunnyside's Motion to Compel. Sunnyside was required to submit a second inspection notice, which also required a "meet and confer," before the inspection was allowed. *Id.* On February 6, 2008 the Second Inspection was rescheduled, however, 45 minutes before the inspection was to occur, counsel for Printcraft and CTR Management informed Sunnyside that Printcraft was unavailable and so only the inspection of the CTR Management portion of the building could occur. On March 14, 2008 Sunnyside filed a Motion to Compel inspection of the entire building which was granted on April 11, 2008. All fees regarding these inspections were not reasonably incurred by Printcraft and could have been avoided if Printcraft would have allowed inspection of the entire building on October 29, 2007. Such fees were unreasonably increased by Printcraft's failure to allow the inspections, requiring the parties to meet and confer multiple times and required hearings on the Motion to Compel which was granted to Sunnyside. The Court should not award Printcraft any fees related to the inspections because such fees were not reasonably incurred.

d. Rates excessive

The rates set forth by the Affidavit of Michael Gaffney are

excessive and should be discounted to the prevailing rates for attorney fees in the area. Rates similar to those set forth in the Affidavit of Lane Erickson, para. 2, are the prevailing rates in Eastern Idaho law firms (\$150-\$185 per hour). This Erikson Affidavit is the only competent evidence in the record regarding prevailing fees and the court should discount Printcraft's claims for fees accordingly.

V. DISCRETIONARY COSTS SHOULD BE DISALLOWED

Printcraft is seeking various discretionary costs for legal research and for expert witnesses. Such costs should be disallowed because they are not exceptional within the context of the nature of the case. The Idaho Supreme Court has stated:

A court may evaluate whether costs are exceptional within the context of the nature of the case. *Hayden Lake Fire Prot. Dist. v. Alcorn*, 141 Idaho 307, 314, 109 P.3d 161, 168 (2005) (holding that the trial court's denial of expert fees was not an abuse of discretion where 'the trial court considered the nature of [the] case as a class action and its effect on numerous Idaho business and found that although expert witnesses were necessary and their fee reasonable, the costs were not exceptional for a class action suit'); accord, *Fish*, 141 Idaho at 493-94, 960 P.2d at 175-76 (holding that the trial court's denial of expert witness fees was not an abuse of discretion where it found the costs were necessary and reasonable, but were not 'exceptional' because 'the vast majority of litigated personal injury cases...routinely require an assessment of the accident and the alleged injuries by various sorts of doctors of medicine, accident reconstructionists, vocational experts and so on'). In this case, the trial court found that Seubert's and Intervenor's costs are 'routine costs associated with modern litigation overhead' in a condemnation case. The trial court did not abuse its discretion in denying the claim for discretionary costs.

City of McCall v. Seubert, 142 Idaho 580, 588, (2006). In this case Printcraft's research costs, process service costs, and other claimed discretionary costs are simply routine costs associated

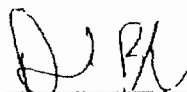
with modern litigation overhead. Printcraft has not provided any evidence that the fees incurred for "Lexis-Nexis" are anything other than routine costs associated with modern litigation. Under IRCP 54(e)(3), only the reasonable cost of automated legal research may be recovered, "if the court finds it was reasonably necessary in preparing a party's case." While Printcraft seeks payment of legal research on a transactional/per hour basis, Printcraft has not established its counsel are billed on an hourly basis as compared to a standard monthly rate as utilized by the majority of law offices. Printcraft has not established why such automated legal research was reasonably necessary in preparing its case. Furthermore, there was nothing exceptional about Printcraft's expert witness costs in this case, as **Printcraft decided not to call expert witnesses at trial**. Printcraft's claims for discretionary costs should therefore be denied.

CONCLUSION

Printcraft's claim for attorney fees under §12-120(3) should be denied because the alleged commercial transactions Printcraft relies on to assert its claim are (1) not between the parties; or (2) prohibited by law. Printcraft's claims for fraudulent non-disclosure were not based upon commercial transactions and instead were based solely in tort. Even if the Court finds that Printcraft is entitled to attorney fees under §12-120(3), Printcraft's claims are excessive and should be significantly reduced. Printcraft should not be awarded discretionary costs because the costs it is claiming are simply routine costs associated with modern

litigation overhead and should not in the interest of justice be assessed against Sunnyside Park Utilities.

DATED this 13th day of April, 2009.



Daniel R. Beck
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the following described pleading or document on the attorneys listed below on this 13th day of April, 2008:

Document Served:

OBJECTION TO PLAINTIFF'S CLAIM
FOR ATTORNEY FEES AND COSTS

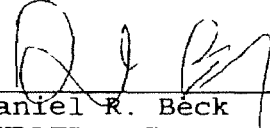
Attorneys Served:

Michael D. Gaffney, Esq.
BEARD ST. CLAIR
2105 Coronado Street
Idaho Falls, ID 83404

☐ U.S. Mail
☒ Facsimile
☐ Hand Delivery

Bryan Smith
SMITH, DRISCOLL & ASSOCIATES
P.O. Box 50731
Idaho Falls, ID 83405-0731
Fax: 529-4166

☐ U.S. Mail
☒ Facsimile
☐ Hand Delivery



Daniel R. Beck
FULLER & CARR

First American Title Company
900 Pier View Drive Ste. 110, Idaho Falls, Idaho 83402
(208)522-9195 - Fax (208)529-8965

FAX TRANSMITTAL

DATE: **04/13/2009 02:54:40 PM**

FILE NO.: **294719-IF**

TO: **Beard, St. Clair, Gaffney, PA**
Attn: **Shaunie**

FAX: **1(208)529-9732**

FROM: **Lois Olson**

Special Instructions/Comments:

CONFIDENTIALITY NOTICE: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt for disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address.

Thank You For Your Business! We Know You Have A Choice.

IMPORTANT NOTICE:

Should any of these papers require an **ORIGINAL SIGNATURE** and your fax machine produces the facsimile on thermal paper, please **PHOTOCOPY** then sign the photocopy.

We will "not" accept an Original Signature on THERMAL fax paper.

Thank you for your cooperation in this matter.

276

**IF TRANSMISSION OF ALL PAGES IS NOT COMPLETE OR IF AN ORIGINAL IS NEEDED,
PLEASE CONTACT THE SENDER.**

Prepared by, recording requested by
and return to:

Name: David R. Schiess
Company: Schiess & Associates
Address: 7103 S 45th West
City: Idaho Falls
State: ID Zip: 83402
Phone: (208)522-1244
Fax: (208) 522-9232

Instrument # 1316496

IDAHO FALLS, BONNEVILLE, IDAHO

10-29-2008 12:38:14 No. of Pages: 2

Recorded for: SCHIESS & ASSOCIATES

RONALD LONGMORE

Ex-Officio Recorder Deputy *[Signature]* Fee: 6.00

Index to: LIEN, LABOR

Above this Line for Official Use Only

Claim of Lien -- Corporation
(Idaho Code § 45-507)

STATE OF IDAHO

COUNTY OF BONNEVILLE

COMES NOW, Kurt Roland as a representative of Schiess & Associates, an Idaho corporation [Lienor], and files this statement in writing, verified by the oath of Schiess & Associates [Person Claiming Lien], who has personal knowledge of the facts herein set forth:

1. The undersigned hereby claims a lien upon the following property, situated in Bonneville County, Idaho, to wit:

Beginning at a point that is S00°27'09"E 25.00 feet from the Northeast Section Corner of Section 31, Township 3 North, Range 38 East of the Boise Meridian, Bonneville County, Idaho, running thence S00°27'09"E 913.64 along the East Section Line; thence S89° 32' 51"W 215.00 feet; thence S00°27'09"E 99.94 feet; thence N89°32'51"E 182.00 feet; thence S00°27'09"E 27.47 feet; thence S89°32'51"W 341.11 feet; thence N01°00'19"W 127.42 feet; thence S89°32'51"W 1413.98 feet; thence N36° 38' 38"W 116.19 feet; thence N15°14'53"W 260.01 feet; thence N01°00'18"E 255.52 feet; thence N02°41'50"E 280.33 feet; thence N02°25'59"E 15.16 feet; thence N89°00'18"E 1901.74 feet to the Point of Beginning, containing 40.015 acres.

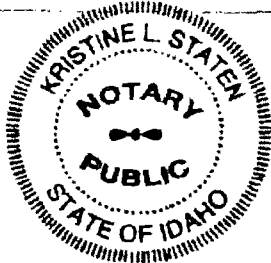
2. Said lien is claimed to secure an indebtedness of \$92,880.71 [Amount Claimed] with interest, after deducting all credits and offsets, from the 20 day of June, 2007, for engineering, platting and survey construction staking and inspection.

EXHIBIT

B

3. The name of the owner's or proprietors of the said property are Jeff Burton and Tony Versteeg.
4. If applicable, the undersigned was employed by or furnished materials to Jeff Burton and Tony Versteeg.

This the 29 day of October, 2008.



[Signature]
Signature
Principal
Title
Schless & Associates
Corporation

Before me, Kristine L. Staten, a Notary Public in and for the County of Bonneville, State of Idaho, personally appeared Kurt Roland, who being duly sworn, doth depose and say: That he has personal knowledge of the facts set forth in the foregoing statement of lien, and that the same are true and correct to the best of his knowledge and belief.

Kristine L. Staten
Affiant.

Subscribed and sworn to before me on this the 29 day of October, 2008, by said Affiant.

Kristine L. Staten
Notary Public

My Commission Expires: 10-01-2011

Certificate of Delivery

I, Joy Spear, hereby certify that I have delivered this day a true and correct copy of the foregoing to

Jeff Burton by:

- (x) Personal Service
- (x) Mailing a true and correct copy of same by certified U.S. mail, postage prepaid, return receipt requested to Schless & Associates, Idaho Falls, ID 83402

So certified this the 29th day of October, 2008.

Joy Spear
Signature

ct

Alan R. Harrison
ALAN R. HARRISON LAW, PLLC
497 N. Capital Ave, Suite 210
Idaho Falls, Idaho 83402
Telephone: (208) 552-1165
Fax: (208) 552-1176
(ISB#: 6589)

7TH JUDICIAL DISTRICT COURT
BONNEVILLE COUNTY, IDAHO

9 MAY -4 2009

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

IDAHO DEVELOPMENT, LLC, a Utah
limited liability company,)

Plaintiff,)

vs.)

TETON VIEW GOLF ESTATES, LLC, a)
Utah limited liability company;)
ROTHCHILD PROPERTIES, LLC, a)
Utah limited liability company;)
WESTERN EQUITY, LLC, a Utah)
limited liability company; AMERITITLE)
COMPANY; ZBS, LLC, an Idaho limited)
liability company; DEPATCO, INC., an)
Idaho Corporation; SCHIESS &)
ASSOCIATES, P.C., an Idaho)
Professional Service Corporation;)
HD SUPPLY WATERWORKS, LTD.,;)
DOES 1-3, and ALL PERSONS IN)
POSSESSION OF REAL PROPERTY)
DESCRIBED HEREIN,)

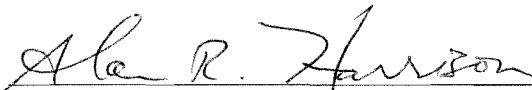
Defendants.)

Case No. CV-08-4395

**STIPULATION TO SET ASIDE
ORDER OF DEFAULT AND
DEFAULT JUDGMENT ENTERED
ON MARCH 16, 2009**

COMES NOW, the Plaintiff, IDAHO DEVELOPMENT, LLC, by and through its attorney, Alan R. Harrison; TETON VIEW GOLF ESTATES, LLC, by and through Lynn C. Spafford, In Propria Persona, General Manager; ROTHCHILD PROPERTIES, LLC, by and through Tony M. Versteeg, In Propria Persona, General Manager; WESTERN EQUITY, LLC, by and through Tony M. Versteeg, In Propria Persona, General Manager; ZBS, LLC, by and through its attorney, Karl R. Decker; DEPATCO, INC., by and through its attorney, Mark R. Fuller ; SCHIESS & ASSOCIATES, P.C., by and through its attorney, Jeffrey D. Brunson; and HD SUPPLY WATERWORKS, LTD, by and through its attorney Douglas R. Hookland, hereby stipulate and agree that the Order of Default and Default Judgment entered on March 16, 2009 by Judge Jon J. Shindurling be set aside for the reason the parties agree the Court would likely grant the Defendants Motion to Set Aside the Order for Default and allow the case to be determined on its merits. The parties agree the current court date of Monday, May 4, 2009 @11:00a.m. will be used by the Court as a scheduling conference.

DATED this 30th day of April, 2009.



Alan R. Harrison
Attorney for Plaintiff

Mark R. Fuller
Attorney for DePatco, Inc.

Jeffrey D. Brunson
Attorney for Schiess & Associates, P.C.

Karl R. Decker
Attorney for ZBS, LLC

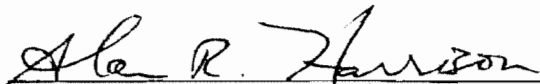
Douglas R. Hookland
Attorney for HD Supply Waterworks, LTD

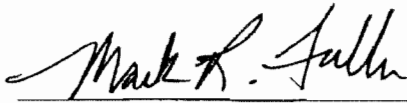
Tony M. Versteeg - In Propria Persona, General
Manager of Rothchild and Western Equity

Lynn C. Spafford – In Propria Persona, General
Manager of Teton View

COMES NOW, the Plaintiff, IDAHO DEVELOPMENT, LLC, by and through its attorney, Alan R. Harrison; TETON VIEW GOLF ESTATES, LLC, by and through Lynn C. Spafford, In Propria Persona, General Manager; ROTHCHILD PROPERTIES, LLC, by and through Tony M. Versteeg, In Propria Persona, General Manager; WESTERN EQUITY, LLC, by and through Tony M. Versteeg, In Propria Persona, General Manager; ZBS, LLC, by and through its attorney, Karl R. Decker; DEPATCO, INC., by and through its attorney, Mark R. Fuller; SCHIESS & ASSOCIATES, P.C., by and through its attorney, Jeffrey D. Brunson; and HD SUPPLY WATERWORKS, LTD, by and through its attorney Douglas R. Hookland, hereby stipulate and agree that the Order of Default and Default Judgment entered on March 16, 2009 by Judge Jon J. Shindurling be set aside for the reason the parties agree the Court would likely grant the Defendants Motion to Set Aside the Order for Default and allow the case to be determined on its merits. The parties agree the current court date of Monday, May 4, 2009 @11:00a.m. will be used by the Court as a scheduling conference.

DATED this 30th day of April, 2009.


Alan R. Harrison
Attorney for Plaintiff


Mark R. Fuller
Attorney for DePatco, Inc.

Jeffrey D. Brunson
Attorney for Schiess & Associates, P.C.

Karl R. Decker
Attorney for ZBS, LLC

Douglas R. Hookland
Attorney for HD Supply Waterworks, LTD


Tony M. Versteeg - In Propria Persona, General
Manager of Rothchild and Western Equity

Lynn C. Spafford - In Propria Persona, General
Manager of Teton View


STIPULATION TO SET ASIDE ORDER OF DEFAULT AND DEFAULT JUDGMENT ENTERED ON MARCH
16, 2009 - 2

COMES NOW, the Plaintiff, IDAHO DEVELOPMENT, LLC, by and through its attorney, Alan R. Harrison; TETON VIEW GOLF ESTATES, LLC, by and through Lynn C. Spafford, In Propria Persona, General Manager; ROTHCHILD PROPERTIES, LLC, by and through Tony M. Versteeg, In Propria Persona, General Manager; WESTERN EQUITY, LLC, by and through Tony M. Versteeg, In Propria Persona, General Manager; ZBS, LLC, by and through its attorney, Karl R. Decker; DEPATCO, INC., by and through its attorney, Mark R. Fuller; SCHIESS & ASSOCIATES, P.C., by and through its attorney, Jeffrey D. Brunson; and HD SUPPLY WATERWORKS, LTD, by and through its attorney Douglas R. Hookland, hereby stipulate and agree that the Order of Default and Default Judgment entered on March 16, 2009 by Judge Jon J. Shindurling be set aside for the reason the parties agree the Court would likely grant the Defendants Motion to Set Aside the Order for Default and allow the case to be determined on its merits. The parties agree the current court date of Monday, May 4, 2009 @11:00a.m. will be used by the Court as a scheduling conference.

DATED this 30th day of April, 2009.


 Alan R. Harrison
 Attorney for Plaintiff

 Mark R. Fuller
 Attorney for DePatco, Inc.


 Jeffrey D. Brunson
 Attorney for Schiess & Associates, P.C.

 Karl R. Decker
 Attorney for ZBS, LLC

 Douglas R. Hookland
 Attorney for HD Supply Waterworks, LTD

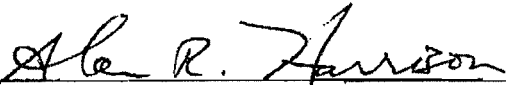
 Tony M. Versteeg - In Propria Persona, General
 Manager of Rothchild and Western Equity

 Lynn C. Spafford - In Propria Persona, General
 Manager of Teton View

STIPULATION TO SET ASIDE ORDER OF DEFAULT AND DEFAULT JUDGMENT ENTERED ON MARCH
 16, 2009 - 2


COMES NOW, the Plaintiff, IDAHO DEVELOPMENT, LLC, by and through its attorney, Alan R. Harrison; TETON VIEW GOLF ESTATES, LLC, by and through Lynn C. Spafford, In Propria Persona, General Manager; ROTHCHILD PROPERTIES, LLC, by and through Tony M. Versteeg, In Propria Persona, General Manager; WESTERN EQUITY, LLC, by and through Tony M. Versteeg, In Propria Persona, General Manager; ZBS, LLC, by and through its attorney, Karl R. Decker; DEPATCO, INC., by and through its attorney, Mark R. Fuller ; SCHIESS & ASSOCIATES, P.C., by and through its attorney, Jeffrey D. Brunson; and HD SUPPLY WATERWORKS, LTD, by and through its attorney Douglas R. Hookland, hereby stipulate and agree that the Order of Default and Default Judgment entered on March 16, 2009 by Judge Jon J. Shindurling be set aside for the reason the parties agree the Court would likely grant the Defendants Motion to Set Aside the Order for Default and allow the case to be determined on its merits. The parties agree the current court date of Monday, May 4, 2009 @11:00a.m. will be used by the Court as a scheduling conference.

DATED this 30th day of April, 2009.


Alan R. Harrison
Attorney for Plaintiff

Mark R. Fuller
Attorney for DePatco, Inc.

Jeffrey D. Brunson
Attorney for Schiess & Associates, P.C.


Karl R. Decker
Attorney for ZBS, LLC

Douglas R. Hookland
Attorney for HD Supply Waterworks, LTD

Tony M. Versteeg - In Propria Persona, General
Manager of Rothchild and Western Equity

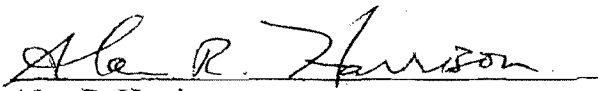
Lynn C. Spafford - In Propria Persona, General
Manager of Teton View

STIPULATION TO SET ASIDE ORDER OF DEFAULT AND DEFAULT JUDGMENT ENTERED ON MARCH
16, 2009 - 2

283

COMES NOW, the Plaintiff, IDAHO DEVELOPMENT, LLC, by and through its attorney, Alan R. Harrison; TETON VIEW GOLF ESTATES, LLC, by and through Lynn C. Spafford, In Propria Persona, General Manager; ROTHCHILD PROPERTIES, LLC, by and through Tony M. Versteeg, In Propria Persona, General Manager; WESTERN EQUITY, LLC, by and through Tony M. Versteeg, In Propria Persona, General Manager; ZBS, LLC, by and through its attorney, Karl R. Decker; DEPATCO, INC., by and through its attorney, Mark R. Fuller; SCHIESS & ASSOCIATES, P.C., by and through its attorney, Jeffrey D. Brunson; and HD SUPPLY WATERWORKS, LTD, by and through its attorney Douglas R. Hookland, hereby stipulate and agree that the Order of Default and Default Judgment entered on March 16, 2009 by Judge Jon J. Shindurling be set aside for the reason the parties agree the Court would likely grant the Defendants Motion to Set Aside the Order for Default and allow the case to be determined on its merits. The parties agree the current court date of Monday, May 4, 2009 @11:00a.m. will be used by the Court as a scheduling conference.


DATED this 30th day of April, 2009.


Alan R. Harrison
Attorney for Plaintiff

Mark R. Fuller
Attorney for DePatco, Inc.

Jeffrey D. Brunson
Attorney for Schiess & Associates, P.C.

Karl R. Decker
Attorney for ZBS, LLC


Douglas R. Hookland
Attorney for HD Supply Waterworks, LTD

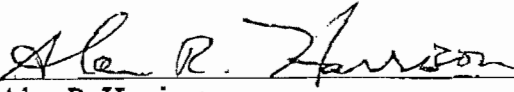
Tony M. Versteeg - In Propria Persona, General
Manager of Rothchild and Western Equity

Lynn C. Spafford – In Propria Persona, General
Manager of Teton View

STIPULATION TO SET ASIDE ORDER OF DEFAULT AND DEFAULT JUDGMENT ENTERED ON MARCH
16, 2009 – 2

COMES NOW, the Plaintiff, IDAHO DEVELOPMENT, LLC, by and through its attorney, Alan R. Harrison; TETON VIEW GOLF ESTATES, LLC, by and through Lynn C. Spafford, In Propria Persona, General Manager; ROTHCHILD PROPERTIES, LLC, by and through Tony M. Versteeg, In Propria Persona, General Manager; WESTERN EQUITY, LLC, by and through Tony M. Versteeg, In Propria Persona, General Manager; ZBS, LLC, by and through its attorney, Karl R. Decker; DEPATCO, INC., by and through its attorney, Mark R. Fuller ; SCHIESS & ASSOCIATES, P.C., by and through its attorney, Jeffrey D. Brunson; and HD SUPPLY WATERWORKS, LTD, by and through its attorney Douglas R. Hookland, hereby stipulate and agree that the Order of Default and Default Judgment entered on March 16, 2009 by Judge Jon J. Shindurling be set aside for the reason the parties agree the Court would likely grant the Defendants Motion to Set Aside the Order for Default and allow the case to be determined on its merits. The parties agree the current court date of Monday, May 4, 2009 @11:00a.m. will be used by the Court as a scheduling conference.

DATED this 30th day of April, 2009.

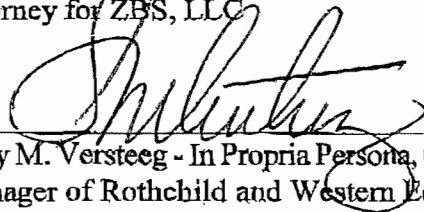

Alan R. Harrison
Attorney for Plaintiff

Mark R. Fuller
Attorney for DePatco, Inc.

Jeffrey D. Brunson
Attorney for Schiess & Associates, P.C.

Karl R. Decker
Attorney for ZBS, LLC

Douglas R. Hookland
Attorney for HD Supply Waterworks, LTD


Tony M. Versteeg - In Propria Persona, General
Manager of Rothchild and Western Equity

Lynn C. Spafford -- In Propria Persona, General
Manager of Teton View

STIPULATION TO SET ASIDE ORDER OF DEFAULT AND DEFAULT JUDGMENT ENTERED ON MARCH
16, 2009 - 2

285

NOTICE OF SERVICE

I certify that on this day I served a true and correct copy of the foregoing document in accordance with Rule 5(b) of the Idaho Rules of Civil Procedure on the following by the method of service indicated:

Lynn Spafford
Teton View Golf Estates
PO Box 711946
SLC, UT 84171

() Mailing, postage pre-paid
(☒) Fax number 801-359-2554

Tony Versteeg
Western Equity, LLC
Rothchild Properties
11105 Londonderry Dr.
Sandy, UT 84092

() Mailing, postage pre-paid
(☒) Fax 801-816-3959

Mark R. Fuller for Depatco
410 Memorial Drive, Suite 201
PO Box 50935
Idaho Falls, ID 83405-0935

() Mailing, postage pre-paid
(☒) Fax 208-524-7167

Douglas R. Hookland for
HD Supply Waterworks, Ltd.
Scott, Hookland, LLP
9185 S.W. Burnham Street
PO Box 23414
Tigard, Oregon 97281

() Mailing, postage pre-paid
(☒) Fax 503-620-4315

Rick Hajek
for Amerititle
1650 Elk Creek
Idaho Falls, ID 83404

(☒) Mailing, postage pre-paid

Karl R. Decker for ZBS
Holden, Kidwell, Hahn & Crapo, PLLC
PO Box 50130
1000 Riverwalk Drive, Suite 200
Idaho Falls, ID 83405

() Mailing, postage pre-paid
(☒) Fax 208-523-9518

Jeffrey D. Brunson for Schiess
Beard St. Clair Gaffney, PA
2105 Coronado Street
Idaho Falls, ID 83404-7495

() Mailing, postage pre-paid
(☒) Fax 208-529-9732

Date: 4-30-09 ARH

Alan R. Harrison
ALAN R. HARRISON LAW, PLLC
497 N. Capital Ave, Suite 210
Idaho Falls, Idaho 83402
Telephone: (208) 552-1165
Fax: (208) 552-1176
(ISB#: 6589)

Attorney for Plaintiff

7TH JUDICIAL DISTRICT COURT
BONNEVILLE COUNTY, IDAHO

9 MAY -4 P3:00

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

IDAHO DEVELOPMENT, LLC, a Utah
limited liability company,

Plaintiff,

vs.

TETON VIEW GOLF ESTATES, LLC, a
Utah limited liability company;
ROTHCHILD PROPERTIES, LLC, a
Utah limited liability company;
WESTERN EQUITY, LLC, a Utah
limited liability company; AMERITITLE
COMPANY; ZBS, LLC, an Idaho limited
liability company; DEPATCO, INC., an
Idaho Corporation; SCHIESS &
ASSOCIATES, P.C., an Idaho
Professional Service Corporation;
HD SUPPLY WATERWORKS, LTD.,;
DOES 1-3, and ALL PERSONS IN
POSSESSION OF REAL PROPERTY
DESCRIBED HEREIN,

Defendants.

Case No. CV-08-4395

**ORDER TO SET ASIDE DEFAULT
AND DEFAULT JUDGMENT
ENTERED ON MARCH 16, 2009**

Based upon the Stipulation signed by the parties, and good cause appearing, the Court Hereby
Orders the Default and Default Judgment Entered on March 16, 2009 to be set aside.

Dated: 5/4/09

[Signature]
Judge Jon J. Shindurling

NOTICE OF SERVICE

I certify that on this day I served a true and correct copy of the foregoing document in accordance with Rule 5(b) of the Idaho Rules of Civil Procedure on the following by the method of service indicated:

Alan Harrison (Idaho Development)
497 N. Capital Ave, Suite 210
Idaho Falls, ID 83402

☒ Courthouse Box

Lynn Spafford (Teton View)
PO Box 711946
SLC, UT 84171

☒ Mailing, postage pre-paid
☐ Fax number 801-359-2554

Tony Versteeg (Western Equity & Rothchild)
11105 Londonderry Dr.
Sandy, UT 84092

☒ Mailing, postage pre-paid
☐ Fax 801-816-3959

Mark R. Fuller (Depatco)
410 Memorial Drive, Suite 201
PO Box 50935
Idaho Falls, ID 83405-0935

☐ Mailing, postage pre-paid
☐ Fax 208-524-7167
☒ Courthouse Box

Douglas R. Hookland (HD Supply)
9185 S.W. Burnham Street
PO Box 23414
Tigard, Oregon 97281

☒ Mailing, postage pre-paid
☐ Fax 503-620-4315

Rick Hajek (Amerititle)
1650 Elk Creek
Idaho Falls, ID 83404

☒ Mailing, postage pre-paid

Karl R. Decker (ZBS)
Holden, Kidwell, Hahn & Crapo, PLLC
PO Box 50130
1000 Riverwalk Drive, Suite 200
Idaho Falls, ID 83405

☐ Mailing, postage pre-paid
☐ Fax 208-523-9518
☒ Courthouse Box

Jeffrey D. Brunson (Schiess)
Beard St. Clair Gaffney, PA
2105 Coronado Street
Idaho Falls, ID 83404-7495

☐ Mailing, postage pre-paid
☐ Fax 208-529-9732
☒ Courthouse Box

Date: 5/4/09 Glenn Walters
Clerk

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

IDAHO DEVELOPMENT, LLC,)
)
Plaintiff,)
)
-vs.-)
)
TETON VIEW GOLF ESTATES, LLC,)
et al,)
Defendants.)
_____)

Case No. CV-2008-4395

**MINUTE ENTRY ON
STATUS CONFERENCE**

9 MAY -5 P4:46

7TH JUDICIAL DISTRICT COURT
BONNEVILLE COUNTY, IDAHO

On May 4, 2009, at 11:00 AM, a Status Conference came on for hearing before the Honorable Jon J. Shindurling, District Judge, sitting in open court at Idaho Falls, Idaho.

Ms. Nancy Marlow, Court Reporter, and Ms. Grace Walters, Deputy Court Clerk, were present.


Mr. Alan Harrison appeared on behalf of plaintiff. Mr. Mark Fuller appeared on behalf of defendant, Depatco. Mr. Karl Decker appeared on behalf of defendant, ZBS. Mr. Doug Hookland appeared telephonically on behalf of defendant, HD Supply Waterworks. Mr. Lynn Spafford appeared telephonically on behalf of himself and Teton View Golf Estates. Mr. Tony Versteeg appeared telephonically on behalf of himself, Rothchild Properties and Western Estates. Mr. Jeff Brunson appeared on behalf of defendant, Schiess & Associates.

The Motion to Amend Default Judgment was agreed to by stipulation.

The Court scheduled a court trial for 1:30 p.m., June 7, 2010. A pre-trial conference was scheduled for 10:00 a.m., May 25, 2010.

The Court ordered mediation with a mediator to be selected before June 25, 2009, and mediation to begin 42 days thereafter

Court was thus adjourned.



JON J. SHINDURLING
District Judge

c: Alan Harrison
Mark Fuller
Lynn Spafford
Karl Decker
Tony Versteeg
Doug Hookland
Jeff Brunson

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

IDAHO DEVELOPMENT, LLC,)
)
Plaintiff,)
)
-vs.-)
)
TETON VIEW GOLF ESTATES, LLC,)
et al,)
Defendants.)
_____)

Case No. CV-2008-4395

**ORDER SETTING PRE-TRIAL
CONFERENCE AND JURY TRIAL**

7TH JUDICIAL DISTRICT COURT
BONNEVILLE COUNTY, IDAHO
9 MAY -5 P4:46

Pursuant to Rule 16 of the Idaho Rules of Civil Procedure, the following pre-trial schedule shall govern all proceedings in this case:

1. IT IS HEREBY ORDERED:

1. Formal pre-trial conference pursuant to Rule 16, I.R.C.P., will be held on May 25, 2010, at 10:00 a.m., at which time witness lists, exhibit lists and any proposed jury instructions must be filed.
2. Court Trial shall commence at 1:30 p.m., on June 7, 2010.
No later than ninety (90) days before the date set for trial, counsel shall disclose the names, addresses, and telephone numbers of expert witnesses that may be called to testify at trial.
4. All discovery shall be completed seventy (70) days prior to trial.¹
5. All Motions for Summary Judgment must be filed sixty (60) days prior to trial in conformance with Rule 56(a), I.R.C.P.
6. All Motions for Summary Judgment must be heard at least twenty-eight (28) days prior to trial.

¹ Discovery requests must be served so that timely responses will be due prior to the discovery cutoff date.

II. IT IS FURTHER ORDERED that each attorney shall, no later than fourteen (14) days before trial:

1. Submit a list of names to the court of persons who may be called to testify.
2. Submit a descriptive list of all exhibits proposed to be offered into evidence to the court indicating which exhibits counsel have agreed will be received in evidence without objection and those to which objections will be made, including the basis upon which each objection will be made.
3. Submit a brief to the court citing legal authorities upon which the party relies as to each issue of law to be litigated.
4. If this is a jury trial, counsel shall submit proposed jury instructions to all parties to the action and the court. All requested instructions submitted to the court shall be in duplicate form as set out in Idaho Rule of Civil Procedure 51(a)(1).
5. Submit that counsel have in good faith tried to settle this action.
6. State whether liability is disputed.

III. IT IS FURTHER ORDERED that each attorney shall no later than seven (7) days before trial:

1. Submit any objections to the jury instructions requested by an opponent specifying the instruction and the grounds for the objection.
2. Deposit with the clerk of the court all exhibits to be introduced, except those for impeachment. The clerk shall mark plaintiff's exhibits in numerical sequence as requested by plaintiff and shall mark all defendant's exhibits in alphabetical sequence as requested by defendant.
3. A duplicate set of all exhibits to be introduced, except those for impeachment, shall be placed in binders, indexed, and deposited with the clerk of the court.


IV. IT IS FURTHER ORDERED that:

1. Any exhibits or witnesses discovered after the last required disclosure shall immediately be disclosed to the court and opposing counsel by filing and service stating the date upon which the same was discovered.
2. No exhibits shall be admitted into evidence at trial other than those disclosed,

listed and submitted to the clerk of the court in accordance with this order, except when offered for impeachment purposes or unless they were discovered after the last required disclosure.

3. This order shall control the course of this action unless modified for good cause shown to prevent manifest injustice.
4. The court may impose appropriate sanctions for violation of this order.

DATED this 4th day of May, 2009.



JON J. SHINDURLING
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 6 day of May, 2009, I did send a true and correct copy of the aforementioned Order upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Alan Harrison
Courthouse Box

Mark Fuller
Courthouse Box

Jeff Brunson
Courthouse Box

Karl Decker
Courthouse Box

Doug Hookland
PO Box 23414
Tigard, OR 97281-3414

Tony Versteeg
11105 Londonderry Dr.
Sandy, UT 84092

Lynn Spafford
2858 E. Willow Creek Dr.
Sandy, UT 84093

RONALD LONGMORE
Clerk of the District Court

By: Grace Walters
Deputy Clerk

BONNEVILLE COUNTY

Jeffrey D. Brunson, ISB No. 6996
Beard St. Clair Gaffney PA
2105 Coronado Street
Idaho Falls, ID 83404-7495
Phone: (208) 523-5171
Fax: (208) 529-9732

Attorneys for Defendant, Schiess & Associates, P.C.

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO**

IDAHO DEVELOPMENT, LLC, a Utah limited liability company,

Plaintiff,

vs.

TETON VIEW GOLF ESTATES, LLC, a Utah limited liability company; ROTHCHILD PROPERTIES, LLC, a Utah limited liability company; WESTERN EQUITY, LLC, a Utah limited liability company; AMERITITLE COMPANY; ZBS, LLC, an Idaho limited liability company; DEPATCO, INC., an Idaho Corporation; SCHIESS & ASSOCIATES, P.C., an Idaho Professional Service Corporation; HD SUPPLY WATERWORKS, LTD.; DOES 1-3, and ALL PERSONS IN POSSESSION OF REAL PROPERTY DESCRIBED HEREIN.

Defendants.

SCHIESS & ASSOCIATES, P.C., an Idaho Professional Service Corporation,

Counterclaimant,

vs.

IDAHO DEVELOPMENT, LLC, a Utah limited liability company.

Counterdefendant.

SCHIESS & ASSOCIATES, P.C., an Idaho Professional Service Corporation,

Crossclaimant,

Case No.: CV-08-4395

SCHIESS & ASSOCIATES,
P.C.'S ANSWER TO DEPATCO,
INC.'S CROSSCLAIM

vs.

TETON VIEW GOLF ESTATES, LLC, a Utah limited liability company; ROTHCHILD PROPERTIES, LLC, a Utah limited liability company; WESTERN EQUITY, LLC, a Utah limited liability company; AMERITITLE COMPANY; ZBS, LLC, an Idaho limited liability company; DEPATCO, INC., an Idaho Corporation; HD SUPPLY WATERWORKS, LTD.; DOES 1-3, and ALL PERSONS IN POSSESSION OF REAL PROPERTY DESCRIBED HEREIN.

Crossdefendants.

SCHIESS & ASSOCIATES, P.C., an Idaho Professional Service Corporation,

Third Party Plaintiff,

vs.

BRAD ZUNDEL, an individual; JIM ZUNDEL, an individual.

Third Party Defendants.

DEPATCO, INC., an Idaho Corporation,

Crossclaimant,

vs.

TETON VIEW GOLF ESTATES, LLC, a Utah limited liability company; ROTHCHILD PROPERTIES, LLC, a Utah limited liability company; WESTERN EQUITY, LLC, a Utah limited liability company; AMERITITLE COMPANY; ZBS, LLC, an Idaho limited liability company; SCHIESS & ASSOCIATES, P.C., an Idaho Professional Service Corporation; HD SUPPLY WATERWORKS, LTD.; DOES 1-3, and ALL PERSONS IN POSSESSION OF REAL PROPERTY DESCRIBED HEREIN.

Crossdefendants.

Defendant/Counterclaimant/Crossclaimant/Counterdefendant, Schiess & Associates, P.C. (Schiess), by and through counsel of record, denies all allegations of

DePatco, Inc.'s Answer and Cross Claim not expressly admitted herein and more specifically respond as follows:

1. Schiess does not have sufficient information to admit or deny paragraph 1, and therefore denies paragraph 1.
2. Schiess does not have sufficient information to admit or deny paragraph 2, and therefore denies paragraph 2.
3. Schiess does not have sufficient information to admit or deny paragraph 3, and therefore denies paragraph 3.
4. Schiess denies paragraph 4.
5. Schiess does not have sufficient information to admit or deny paragraph 5, and therefore denies paragraph 5.
6. Schiess does not have sufficient information to admit or deny paragraph 6, and therefore denies paragraph 6.
7. Schiess does not have sufficient information to admit or deny paragraph 7, and therefore denies paragraph 7.
8. Schiess incorporates its responses to paragraphs 1 through 7 to the Cross Claim.
9. Schiess does not have sufficient information to admit or deny paragraph 9, and therefore denies paragraph 9.
10. Schiess does not have sufficient information to admit or deny paragraph 10, and therefore denies paragraph 10.
11. Schiess does not have sufficient information to admit or deny paragraph 11, and therefore denies paragraph 11.

12. Schiess does not have sufficient information to admit or deny paragraph 12, and therefore denies the remainder of paragraph 12.

13. Schiess does not have sufficient information to admit or deny paragraph 13, and therefore denies paragraph 13.

14. Schiess incorporates its responses to paragraphs 1 through 13 to the Cross Claim.

15. Schiess does not have sufficient information to admit or deny paragraph 15, and therefore denies paragraph 15.

16. Schiess does not have sufficient information to admit or deny paragraph 16, and therefore denies paragraph 16.

17. Schiess does not have sufficient information to admit or deny paragraph 17, and therefore denies paragraph 17.

18. Schiess does not have sufficient information to admit or deny paragraph 18, and therefore denies paragraph 18.

19. Schiess does not have sufficient information to admit or deny paragraph 19, and therefore denies paragraph 19.

20. Schiess incorporates its responses to paragraphs 1 through 19 to the Cross Claim.

21. Schiess does not have sufficient information to admit or deny paragraph 21, and therefore denies paragraph 21.

22. Schiess does not have sufficient information to admit or deny paragraph 22, and therefore denies paragraph 22.

23. Schiess does not have sufficient information to admit or deny paragraph 23, and therefore denies paragraph 23.

24. Schiess does not have sufficient information to admit or deny paragraph 24, and therefore denies paragraph 24.

25. Schiess incorporates its responses to paragraphs 1 through 25 to the Cross Claim.

26. Schiess does not have sufficient information to admit or deny paragraph 26, and therefore denies paragraph 26.

27. Schiess does not have sufficient information to admit or deny paragraph 27, and therefore denies paragraph 27.

28. Schiess does not have sufficient information to admit or deny paragraph 28, and therefore denies paragraph 28.

29. Schiess does not have sufficient information to admit or deny paragraph 29, and therefore denies paragraph 29.

30. Schiess does not have sufficient information to admit or deny paragraph 30, and therefore denies paragraph 30.

31. Schiess incorporates its responses to paragraphs 1 through 31 to the Cross Claim.

32. Schiess admits paragraph 32.

33. Schiess denies paragraph 33.

34. Schiess denies paragraph 34.

35. Schiess does not have sufficient information to admit or deny paragraph 35, and therefore denies paragraph 35.

36. Schiess denies paragraph 36.

37. Schiess does not have sufficient information to admit or deny paragraph 37, and therefore denies paragraph 37.

AFFIRMATIVE DEFENSES

Schiess asserts the following affirmative defenses:

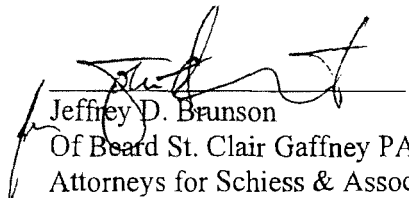
1. The Cross Claim fails to state a claim upon which relief can be granted.
2. Schiess has priority pursuant to Idaho Code §§ 45-506 and 45-512 and *Ultrawall, Inc. v. Trepagnier*, 135 Idaho 832, 25 P.3d 855 (2001); *Pacific States Sav., Loan, and Bldg. Co. v. Dubois*, 11 Idaho 319, 83 P. 513 (1905).
3. Schiess has priority because it commenced performing services on the property before Plaintiff recorded its deed of trust and DePatco filed its lien.

PRAYER FOR RELIEF

WHEREFORE, Schiess demands judgment:

1. Dismissing DePatco, Inc.'s Answer and Crossclaim in its entirety;
2. Determining that Schiess's lien has priority to all other liens and claims on the property;
3. Awarding Schiess' reasonable attorneys' fees, costs and disbursements of defending this action pursuant to, Idaho Code §§ 12-120, 12-121, 45-513, Rule 54 of the Idaho Rules of Civil Procedure, and any other rule or provision; and
4. Granting such other and further relief as the Court deems just and proper.

Dated: May 5, 2009.


Jeffrey D. Brunson
Of Beard St. Clair Gaffney PA
Attorneys for Schiess & Associates, P.C.

CERTIFICATE OF SERVICE

I certify that I am a licensed attorney in the State of Idaho and that on May 5, 2009, I served a true and correct copy of the SCHIESS & ASSOCIATES, P.C.'S ANSWER TO DEPATCO, INC.'S CROSSCLAIM upon the following by the method of delivery designated:

Alan Harrison
Alan R. Harrison Law
497 N Capital Avenue, Suite 210
Idaho Falls, ID 83402
Fax: 552-1176

☐ US Mail ☐ Hand delivered ☒ Facsimile

Karl Decker
Holden Kidwell
PO Box 50130
Idaho Falls, ID 83405-0130
Fax: 523-9518

☐ US Mail ☐ Hand delivered ☒ Facsimile

Mark Fuller
Fuller & Carr
PO Box 50935
Idaho Falls, ID 83405-0935
Fax: 524-7167

☐ US Mail ☐ Hand delivered ☒ Facsimile

Douglas Hookland
Scott Hookland
PO Box 23414
Tigard, OR 97281-3414
Fax: 503-620-4540

☐ US Mail ☐ Hand delivered ☒ Facsimile

Lynn C. Spafford
Teton View Golf Estates, LLC
PO Box 711946
Salt Lake City, UT 84171

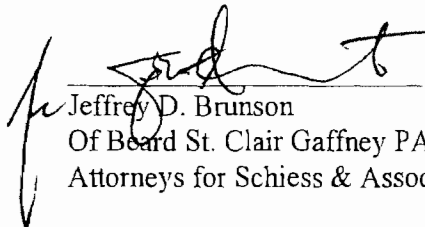
☒ US Mail ☐ Hand delivered ☐ Facsimile

Tony M. Versteeg
Western Equity, LLC
Rothchild Properties
11105 S. Londonberry Drive
Draper, UT 84092

☒ US Mail ☐ Hand delivered ☐ Facsimile

Bonneville County Courthouse
605 N Capital Avenue
Idaho Falls, ID 83402
Fax: 529-1300

☐ US Mail ☐ Hand delivered ☒ Facsimile


Jeffrey D. Brunson
Of Beard St. Clair Gaffney PA
Attorneys for Schiess & Associates, P.C.

7

BONNEVILLE COUNTY

Alan R. Harrison
ALAN R. HARRISON LAW, PLLC
497 N. Capital Ave, Suite 210
Idaho Falls, Idaho 83402
Telephone: (208) 552-1165
Fax: (208) 552-1176
(ISB#: 6589)

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

IDAHO DEVELOPMENT, LLC, a Utah
limited liability company,

Plaintiff,

vs.

TETON VIEW GOLF ESTATES, LLC, a
Utah limited liability company;
ROTHCHILD PROPERTIES, LLC, a
Utah limited liability company;
WESTERN EQUITY, LLC, a Utah
limited liability company; AMERITITLE
COMPANY; ZBS, LLC, an Idaho limited
liability company; DEPATCO, INC., an
Idaho Corporation; SCHIESS &
ASSOCIATES, P.C., an Idaho
Professional Service Corporation;
HD SUPPLY WATERWORKS, LTD.,;
DOES 1-3, and ALL PERSONS IN
POSSESSION OF REAL PROPERTY
DESCRIBED HEREIN,

Defendants.

Case No. CV-08-4395

**PLAINTIFF'S ANSWER TO
DEPATCO'S CROSS CLAIM**

COMES NOW, Plaintiff, Idaho Development, LLC, answers Defendant DePatco's
("DePatco") Cross Claim as follows:

FIRST DEFENSE

1. DePatco fails to state a cause of action against Plaintiff upon which relief can be granted.

SECOND DEFENSE

2. Plaintiff denies any and all allegations of DePatco's Cross Claim unless specifically Admitted in this answer.

THIRD DEFENSE

3. DePatco's interest is subordinate to Plaintiff's secured interest in the property because Plaintiff had recorded in Bonneville County valid deeds of trust on the property as Instrument # 1291905 on February 29, 2008 and Instrument # 1292697 on March 10, 2008, which were prior to DePatco doing any work on the property. Therefore, DePatco was on notice of Plaintiff's interest prior to DePatco starting any work on the property.

FOURTH DEFENSE

4. Plaintiff is not liable to DePatco for any of the amount claimed on the lien because Plaintiff had no knowledge and did not consent to the managers of Teton View hiring DePatco to begin work before a construction loan was obtained.

FIFTH DEFENSE

5. Plaintiff is not liable to DePatco because DePatco started work on the property looking to be paid from a construction loan and/or lot sales and not from Plaintiff. Plaintiff and DePatco have not entered into any oral or written contractual relationships.

In responding to the allegations of DePatco's Cross Claim, Plaintiff answers on its own behalf and not in behalf of any other party as follows:

1. Counts I-IV do not require a response from Plaintiff as they are directed to Teton View, however in order to provide Plaintiff's position on these allegations, Plaintiff provides the following response to the allegations in paragraphs 1-24.
2. Plaintiff does not have sufficient information to admit or deny paragraph 1 and therefore denies paragraph 1.
3. As to the allegations in paragraph 2, Plaintiff admits DePatco has done work on the property. Plaintiff is without sufficient information to admit or deny the remainder of the allegations in paragraph 2 and therefore denies the remaining allegations in paragraph 2. Plaintiff asserts it did not contract with DePatco to perform this work or agree with DePatco to start work on the property prior to a construction loan being obtained.
4. As to the allegations in paragraph 3, Plaintiff admits DePatco recorded a materialman's lien on the property and that this lien should be foreclosed and the property sold. Plaintiff asserts in this foreclosure and sale that Plaintiff's recorded deed of trust should be declared prior to and have priority over DePatco's recorded lien. Plaintiff is without sufficient information to admit or deny the remainder of the allegations in paragraph 3 and therefore denies the remaining allegations in paragraph 3.
5. As to the allegations in paragraph 4, Plaintiff denies the same.
6. As to the allegations in paragraph 5, Plaintiff states it had not seen this letter prior to it being filed with DePatco's answer. Plaintiff admits DePatco has not been paid the full amount it claims is owed for work done on the property. Plaintiff is without sufficient information to admit or deny the remainder of the allegations in paragraph 5 and therefore denies the remaining allegations in paragraph 5.


7. Plaintiff does not have sufficient information to admit or deny paragraph 6 and therefore denies paragraph 6.
8. As to the allegations in paragraph 7, Plaintiff denies the same.
9. As to the allegations in paragraph 8, Plaintiff re-alleges each and every admission and denial to paragraphs 1-7 as if set forth fully herein.
10. As to the allegations in paragraph 9, Plaintiff admits Tony Versteeg signed the bid proposal from DePatco on June 18, 2008, Plaintiff is without sufficient information to admit or deny the remainder of the allegations in paragraph 9 and therefore denies the remaining allegations in paragraph 9. Plaintiff asserts it did not contract with DePatco to perform this work or agree with DePatco to start work on the property prior to a construction loan being obtained.
11. Plaintiff does not have sufficient information to admit or deny paragraph 10 and therefore denies paragraph 10.
12. As to the allegations in paragraph 11, Plaintiff admits DePatco supplied construction materials and services to the property, Plaintiff is without sufficient information to admit or deny the remainder of the allegations in paragraph 11 and therefore denies the remaining allegations in paragraph 11.
13. Plaintiff does not have sufficient information to admit or deny paragraph 12 and therefore denies paragraph 12.
14. As to the allegations in paragraph 13, Plaintiff denies the same.
15. As to the allegations in paragraph 14, Plaintiff re-alleges each and every admission and denial to paragraphs 1-13 as if set forth fully herein.

16. As to the allegations in paragraph 15, Plaintiff admits DePatco has done work on the property. Plaintiff is without sufficient information to admit or deny the remainder of the allegations in paragraph 15 and therefore denies the remaining allegations in paragraph 15. Plaintiff asserts it did not contract with DePatco to perform this work or agree with DePatco to start work on the property prior to a construction loan being obtained.
17. As to the allegations in paragraph 16, Plaintiff denies the same.
18. As to the allegations in paragraph 17, Plaintiff denies the same.
19. As to the allegations in paragraph 18, Plaintiff denies the same.
20. As to the allegations in paragraph 19, Plaintiff denies the same.
21. As to the allegations in paragraph 20, Plaintiff re-alleges each and every admission and denial to paragraphs 1-19 as if set forth fully herein.
22. As to the allegations in paragraph 21, Plaintiff admits DePatco has done work on the property. Plaintiff is without sufficient information to admit or deny the remainder of the allegations in paragraph 21 and therefore denies the remaining allegations in paragraph 21. Plaintiff asserts it did not contract with DePatco to perform this work or agree with DePatco to start work on the property prior to a construction loan being obtained.
23. Plaintiff does not have sufficient information to admit or deny paragraph 22 and therefore denies paragraph 22.
24. Plaintiff does not have sufficient information to admit or deny paragraph 23 and therefore denies paragraph 23.
25. As to the allegations in paragraph 24, Plaintiff denies the same.
26. As to the allegations in paragraph 25, Plaintiff re-alleges each and every admission and denial to paragraphs 1-24 as if set forth fully herein.

27. As to the allegations in paragraph 26, Plaintiff admits it signed a joint venture agreement dated February 29, 2008. Plaintiff admits it has a 33% ownership interest in Teton View Golf Estates, LLC. Plaintiff admits it gave \$1,100,000.00 to Teton View Golf Estates in exchange for a promissory note and deed of trust which was recorded in Bonneville County as Instrument #1291905 on February 29, 2008 and was amended by Instrument # 1292697 on March 10, 2008. Plaintiff denies all remaining allegations in paragraph 26.
28. As to the allegations in paragraph 27, Plaintiff admits that on or about February 29, 2008, Teton View Golf Estates, LLC signed a promissory note and provided Idaho Development, LLC, with a Commercial Loan Deed of Trust in the amount of \$1,100,00.00 recorded as Bonneville County Instrument No. 1291905. Plaintiff denies the remaining allegations in paragraph 27.
29. As to the allegations in paragraph 28, Plaintiff admits.
30. As to the allegations in paragraph 29, Plaintiff denies.
31. As to the allegations in paragraph 30, Plaintiff denies.
32. As to the allegations in paragraph 31, Plaintiff re-alleges each and every admission and denial to paragraphs 1-30 as if set forth fully herein.
33. As to the allegations in paragraph 32, Plaintiff denies that its security interest is inferior and junior to DePatco's interest.
34. As to the allegations in paragraph 33, Plaintiff denies the same.
35. As to the allegations in paragraph 34, Plaintiff denies the same.
36. As to the allegations in paragraph 35, Plaintiff admits.
37. As to the allegations in paragraph 36, Plaintiff admits DePatco may be a purchaser at the sale, but denies the remaining allegations in paragraph 36.

38. As to the allegations in paragraph 37, Plaintiff denies the same. In the event the Court does grant DePatco a deficiency judgment against Teton View, that said judgment is in no way against Plaintiff, Plaintiff's secured interest in the property, or money received from the foreclosure of Plaintiff's secured interest in the property.

DATED this 7th day of May, 2009.



Alan R. Harrison
Attorney for Plaintiff

NOTICE OF SERVICE

I certify that on this day I served a true and correct copy of the foregoing document in accordance with Rule 5(b) of the Idaho Rules of Civil Procedure on the following by the method of service indicated:

Lynn Spafford (Teton View)
PO Box 711946
SLC, UT 84171

(☒) Mailing, postage pre-paid
() Fax number 801-359-2554

Tony Versteeg (Western Equity & Rothchild)
11105 Londonderry Dr.
Sandy, UT 84092

(☒) Mailing, postage pre-paid
() Fax 801-816-3959

Mark R. Fuller (Depatco)
410 Memorial Drive, Suite 201
PO Box 50935
Idaho Falls, ID 83405-0935

() Mailing, postage pre-paid
() Fax 208-524-7167
(☒) Courthouse Box

Douglas R. Hookland (HD Supply)
9185 S.W. Burnham Street
PO Box 23414
Tigard, Oregon 97281

(☒) Mailing, postage pre-paid
() Fax 503-620-4315

Rick Hajek (Amerititle)
1650 Elk Creek
Idaho Falls, ID 83404

(☒) Mailing, postage pre-paid

Karl R. Decker (ZBS)
Holden, Kidwell, Hahn & Crapo, PLLC
PO Box 50130
1000 Riverwalk Drive, Suite 200
Idaho Falls, ID 83405

() Mailing, postage pre-paid
() Fax 208-523-9518
(☒) Courthouse Box

Jeffrey D. Brunson (Schiess)
Beard St. Clair Gaffney, PA
2105 Coronado Street
Idaho Falls, ID 83404-7495

() Mailing, postage pre-paid
() Fax 208-529-9732
(☒) Courthouse Box

Date: 5-7-09 ARH
Alan R. Harrison